



THE CITY OF SAN DIEGO

330
3-11-08

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: March 6, 2008

IBA Report Number: 08-22

City Council Docket Date: March 11, 2008

Item Number: 330 and 331

Lead Hazard Prevention and Control Ordinance

OVERVIEW

On Tuesday, March 8, 2008 the City Council will consider two ordinances related to lead hazard prevention and control. These ordinances would strengthen the City's regulations pertaining to lead hazards, and provide greater effectiveness for the City's code enforcement and lead hazard abatement efforts.

Item 330 reflects the proposed ordinance that was recommended by the Land Use and Housing Committee (LU&H) on August 4, 2004 (O-2008-90, "Version A"), while Item 331 reflects the current proposal from the Mayor (O-2008-91, "Version B"). The two proposals differ in that the LU&H ordinance would require inspection for and correction of any lead hazards prior to a change in ownership of residential property, while the Mayor's proposed ordinance does not contain such a requirement. The ordinances are substantively identical in all other respects.

As these ordinances would result in tighter regulations pertaining to lead hazards, a certain amount of enforcement would be necessary to ensure optimal effectiveness. To partially fund this enforcement effort, both Items propose establishment of a cost-recovery fee for building permit-related enforcement, while Item 330 also proposes a cost-recovery fee related to the lead hazard correction requirement upon change of ownership. However, in neither case are the revenues from cost recovery fees sufficient to fully fund an optimal level of enforcement, as some enforcement efforts do not currently have a permanent funding mechanism.



Office of Independent Budget Analyst

202 C Street, MS 3A • San Diego, CA 92101

Tel (619) 236-6555 Fax (619) 236-6556



This report aims simply to provide clarification on what these ordinances require, the difference between the alternative proposals, and the potential budgetary impacts to the City in terms of enforcement and cost recovery.

FISCAL/POLICY DISCUSSION

The proposed Lead Hazard Prevention and Control Ordinances for both Item 330 (Version A) and Item 331 (Version B), are largely similar in substance. They both implement significant new regulations pertaining to lead hazards, such as requiring the use of lead-safe work practices, inspection and correction of lead hazards prior to re-occupancy of rental housing, and notification of lead hazard regulations by home-improvement stores that sell or rent high pressure water equipment.

Both of the proposed ordinances would do the following:

1. Declare that lead hazards are a public nuisance;
2. Make it unlawful to create or maintain a lead hazard;
3. Require the use of lead-safe work practices for activities that disturb lead-based paint;
4. Establish a rebuttable presumption that paint on dwelling units constructed prior to 1979 is lead-based paint;
5. Impose a duty on owners of housing to correct lead hazards upon notification that a hazard exists;
6. Provide for occupant relocation during lead hazard remediation;
7. Require visual inspection and correction of deteriorated paint in rental housing constructed prior to 1979 prior to re-occupancy;
8. Require home improvement stores that sell or rent high-pressure water equipment to provide pamphlets and post notification of lead hazards and lead-safe work practices;
9. Impose a duty on child care centers to require parents of each child provide a doctor's note that the child has been screened for lead poisoning;
10. Provide for enforcement authority and remedies;
11. Provide for reinspection cost recovery

The proposed ordinances differ in that Version A also includes a point-of-sale provision, which requires identification and correction of lead hazards prior to a change in ownership of a residential property. This provision, found in Section 54.1010 in Version A (O-2008-90), places responsibility on the seller of a residential property to have a lead risk assessment performed by a Certified Lead Inspector, and to correct all identified lead hazards. This section also includes provisions whereby the responsibility for compliance may be transferred to the buyer.

Compliance with this provision will be effectuated by requiring the buyer, the seller and the Certified Lead Inspector to sign and submit to the City a lead-safe or lead-free certificate. Item 330 also proposes establishing a cost recovery application filing fee associated with the lead-safe or lead-free certificates pursuant to this provision. As both of the proposed ordinances would tighten and enhance City regulations pertaining to lead hazards and lead-safe work practices, they would both require increased City costs for education, outreach and enforcement to be fully effective. The Environmental Services Department estimates that adequate enforcement would require additional costs of approximately \$1.1 million for Version A and \$840,000 for Version B. For both versions, this includes estimated costs for education, outreach and enforcement associated with the new lead hazard regulations, including lead-safe working standards, lead hazard inspection, home improvement store lead hazard notification and child care lead screening requirements. Version A also includes costs related to administration and enforcement of the point-of-sale provisions.

Item 330 and 331 propose cost recovery fees in order to offset a portion of these costs. Both Items propose a \$31 permit fee to be applied to certain permit categories in order to recover the cost of permit-related enforcement associated with lead-safe working practices. Item 330 also proposed a \$40 cost recovery application filing fee associated with lead-safe or lead-free certificates pursuant to the point-of sales provision in Version A. While these fees would fully recover certain enforcement costs, there are additional enforcement efforts that currently do not have a permanent funding mechanism. The table below shows the full enforcement cost and level of cost recovery for each of the proposed ordinances.

Proposed Ordinance	Estimated Full Cost	Cost Recovered	Funding Needed*
Version A	\$1,083,630	\$358,100	\$725,530
Version B	\$841,264	\$119,580	\$721,684

** In FY09 the funding gap may be partially mitigated with the use of grant funds*

As this table shows, the cost recovery fees for either ordinance are not sufficient to fully fund adequate enforcement costs. Again, this is due to the fact that certain enforcement efforts do not currently have a permanent funding mechanism. Absent additional revenue sources, either the General Fund would be required to support the remaining cost of enforcement, or a sub-optimal level of enforcement would be provided. The staff report states that program implementation will be prioritized based on available funding, indicating that the Mayor does not plan to utilize General Fund dollars for this purpose.

The IBA is concerned about the practice of establishing new policies or regulations without providing the funding for adequate enforcement or implementation. This has occurred with items such as the Living Wage Ordinance and Equal Opportunity

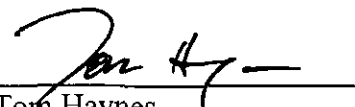
Contracting, and has led to sub-optimal levels of enforcement in those areas. It is important to note, however, that even with partial funding the City would still benefit from adoption of either of the proposed ordinances, as they would provide the necessary tools and legal language to ensure the effectiveness of the City's enforcement efforts, regardless of the level of that effort.

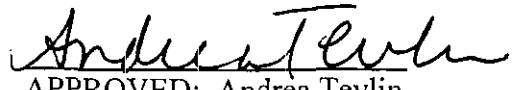
The Council may wish to consider allocating General Fund resources for this purpose in the FY 2009 budget, or continue investigating alternative funding sources. Potential funding sources include an increase in the Rental Unit Business License Tax, a cost-recovery fee for enforcement inspections that result in a Notice of Violation, and grant funds.

CONCLUSION

Items 330 and 331 present two versions of the proposed Lead Hazard Prevention and Control Ordinance. Both ordinances strengthen the City's lead hazard regulations in an effort to reduce or eliminate lead exposure. Version A (Item 330) differs from Version B (Item 331) in that it includes a provision that requires identification and correction of lead hazards prior to a change of ownership of residential property. The two versions are substantively identical in all other aspects.

The cost of adequate education, outreach and enforcement for these ordinances is estimated to be \$1.1 million for Version A and \$840,000 for Version B. While partial funding would be generated through cost recovery fees, under either version additional resources would be needed to fully implement adequate enforcement programs. The staff report indicates that the General Fund will not be used to support these costs, and that the enforcement program would be prioritized based on available funding. The IBA is concerned about the practice of implementing new laws and regulations without providing adequate funding for enforcement, though the City would still benefit from adoption of either of the proposed ordinances, even with partial funding. However, the City Council may wish to consider using General Fund resources or explore additional alternative funding sources to support a greater level of enforcement.


Tom Haynes
Fiscal & Policy Analyst


APPROVED: Andrea Tevlin
Independent Budget Analyst

COMMITTEE ACTION SHEET

COUNCIL DOCKET OF _____

☐ Supplemental ☐ Adoption ☐ Consent ☐ Unanimous Consent Rules Committee Consultant Review

R -

O -

Comprehensive Lead Paint Ordinance

☒ Reviewed ☐ Initiated By LU&H On 8/04/04 Item No. 3

RECOMMENDATION TO:

Approve the City Manager's recommendation with the following modifications and direction: 1) Eliminate the requirement for lead hazard inspection and remediation by 2010 of all pre-1978 residential units, except at point of sale, and direct the City Manager to return to the Committee in two years with an evaluation of the effectiveness of the ordinance and a re-examination of the need for a blanket inspection/remediation requirement; 2) with respect to the City Manager's recommendation to increase the rental unit business tax in support of the provision of the Lead Paint Ordinance, instead, direct the City Manager to earmark a portion of the current fee to that purpose; and 3) with respect to the point of sale requirement, include language to indicate when this provision goes into effect.

VOTED YEA: Peters, Lewis, Frye, Inzunza

VOTED NAY:

NOT PRESENT: Zucchet

CITY CLERK: Please reference the following reports on the City Council Docket:

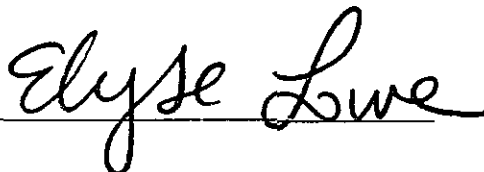
REPORT TO THE CITY COUNCIL NO. 04-178

COUNCIL COMMITTEE CONSULTANT ANALYSIS NO.

OTHER:

Jose Lopez' August 3, 2004, letter; Tom Scott's July 31, 2004, letter; Jay Powell's July 29, 2004, Letter; Alan Pentico's July 22, 2004, letter; Susan Riggs Tinsky's July 16, 2004, letter; Citizens' letters; Angie Neeleman's letter

COUNCIL COMMITTEE CONSULTANT





SAN DIEGO HOUSING FEDERATION
PROMOTING QUALITY AFFORDABLE HOUSING AND COMMUNITY
DEVELOPMENT THROUGHOUT SAN DIEGO COUNTY

450 B Street, Ste. 1010 • San Diego, CA 92101-8007
(619) 239-6693 • FAX (619) 239-5523
www.housingsandiego.org
Email: sdhl@housingsandiego.org

July 31, 2004

Councilman Scott Peters
LU&H Committee
City of San Diego
202 C Street
San Diego, CA 92101

Re: Proposed Lead Hazards Ordinance "Support if Amended"

Dear Councilman Peters and Members of the LU&H Committee:

On behalf of the members of the San Diego Housing Federation, I would like to share with you some concerns regarding the proposed Lead Hazards Ordinance that will be reviewed by the Land Use and Housing Committee on August 4, 2004. First, the Federation and its members would like to commend the City of San Diego for their efforts to protect the health and well-being of its youngest citizens, children. However, we believe that the ordinance as written will unnecessarily increase the cost of rental housing and home ownership for low income households.

The primary concern is the shotgun approach to addressing this problem. The home inspection and remediation requirements will apply to EVERY home built in the city before 1979. This would be completely acceptable if it was true that every home built before 1979 was causing lead poisoning to the children residing there. However, if that were true, then every one of us over the age of 30 should be suffering from lead poisoning because we spent our childhoods in pre-1979 homes.

This supposition is supported by the report on the *National Survey Of Lead-Based Paint In Housing*.¹ The study estimated that the incidence of lead paint is 83% of the homes built before 1980. The study goes on to state: "Although these numbers are vast, they do not necessarily suggest that each home is an immediate hazard to its occupants." The study points out that the condition of the paint is "also a factor in determining the hazards from lead-based paint. Except during renovations, intact lead-based paint probably poses little immediate risks to occupants; however, peeling, chipping, or otherwise deteriorating paint (non-intact) may present an immediate danger to

¹ Report On The National Survey Of Lead-Based Paint In Housing: Base Report. This work was conducted under HUD Contract Number HC-5848 and EPA Contract Numbers 68-D9-0174, 68-D2-0139 and 68-D3-0011, June, 1995. Found at: <http://www.epa.gov/lead/r95-003.pdf>

occupants." The study estimates that only 19% of the pre-1980 dwelling units have non-intact paint. (see enclosure).

Rather than penalize the 80% of homeowners that maintain their homes by requiring an unnecessary inspection process, why not institute a code enforcement initiative that targets dwelling units with a high index of suspicion, e.g. homes that have poorly maintained exteriors and are in neighborhoods with pre-1979 dwellings? Give code enforcement the power to require lead assessments and abatement on such homes as these homes are more likely to be as poorly maintained on the interior as they are on the exterior. Low income owners should be provided with a loan secured with a lien to pay for the inspection and repairs.

This would be an improvement over the 2010 deadline as well because the owners of those homes are more likely to put off meeting the compliance deadline until the last minute and then may require expensive city intervention.

Having said that, here are our comments on components of the proposed ordinance:

Section 54.1007 Lead Hazards in Housing

(b) Owner's Opportunity to Rebut Presumption.

Add a new (3) *The Director shall accept certifications done for prior inspection and remediation work funded by federal, state or local government funds.*

Rationale: The majority of the pre 1979 affordable housing projects were developed with HUD funding and have had remediation work completed with HUD funding. Furthermore, the city has had lead hazard mitigation programs that addressed these concerns. Owners should not be required to pay for another certification by a Certified Lead Inspector/Assessor.

(c) Owner's Duty to Inspect and Correct

(2) Requirement that all dwelling units have a Lead Risk Assessment by a time certain.

The San Diego Housing Federation **STRONGLY OPPOSES** this section. This should be redefined to specify dwelling units that are at high risk for containing a lead hazard. Code enforcement should develop a program that targets dwellings with a high index of suspicion and have the power to require a lead assessment inspection.

Rationale: The majority of pre-1979 dwelling units do not have lead hazards. If they did there would be a dramatically higher incidence of lead poisoning. By requiring all dwelling units to be inspected, it will unnecessarily burden low income homeowners, especially seniors and the disabled on fixed incomes with an unnecessary cost.

Section 54.1009 Visual Lead Inspection & Correction at Transfer of Tenancy --

The San Diego Housing Federation SUPPORTS this section.

Section 54.1010 Identification & Remediation at Change of Ownership

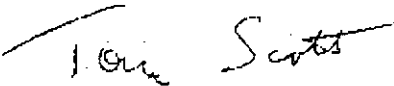
This provision could be a burden on low income and first time homebuyers. Again, given the fact that most of the pre 1979 homes are probably not hazardous, it seems that a more practical approach would be to require a visual inspection by a third party inspector that could potentially lead to the requirement for a full assessment.

- (h) exemptions to (c) should be amended by adding:
or, the transferor produces certifications done for prior inspection and remediation work funded by federal, state or local government funds.

Rationale: This will permit those dwelling units that have been inspected and remediated under prior programs to be grandfathered.

We urge the council to take a more measured approach to addressing this problem by targeting high risk dwellings for inspection and remediation.

Sincerely,



Tom Scott
Executive Director

Enclosure

cc: San Diego City Council

000479

**REPORT ON THE NATIONAL SURVEY
OF LEAD-BASED PAINT IN HOUSING**

Base Report

**This work was conducted under
HUD Contract Number HC-5848 and
EPA Contract Numbers 68-D9-0174, 68-D2-0139 and 68-D3-0011**

June, 1995

2. NATIONAL ESTIMATES OF PREVALENCE

This chapter presents findings on the lead hazard in homes. Some of the estimates are revised from the estimates reported in the *Comprehensive and Workable Plan for the Abatement of Lead-Based Paint in Privately Owned Housing: Report to Congress* (CWP Report) in light of the measurement error analyses reported in Appendix II, Chapter 3.

2.1 Major Findings and Discussion

An estimated 64 million (77 million to 81 million)¹³ or 83 percent ($\pm 9\%$) of private housing units in the United States built before 1980 have lead-based paint on either interior painted surfaces, exterior painted surfaces, or both, (57 million (± 5 million), or 74 percent ($\pm 6\%$) was reported in the CWP Report). Approximately 782,000 ($\pm 77,000$) or 86 percent ($\pm 8\%$) of pre-1980 public housing units also have lead-based paint on their surfaces. Although these numbers are vast, they do not necessarily suggest that each home is an immediate hazard to its occupants. There are many potential factors which determine the hazards posed by lead-based paint. Several are discussed below.

In addition to the lead loading levels, the condition of the paint is also a factor in determining the hazards from lead-based paint. Except during renovations, intact lead-based paint probably poses little immediate risks to occupants; however, peeling, chipping, or otherwise deteriorating paint (non-intact) may present an immediate danger to occupants. An estimated 14 million or 19 percent of pre-1980 private housing units have non-intact lead-based paint on their surfaces. This is significant not only because peeling and chipping paint may be directly ingested by children, but it is more likely to break-off and contaminate house dust and soil. Young children ingest large amounts of dust and soil every day through normal hand-to-mouth contact. Because of this normal activity, dust and soil are considered to be the most significant routes of lead exposure to children. Therefore, understanding lead pathways resulting in exposure is essential to preventing childhood lead poisoning, and was a major goal of this study.

The national survey also examined lead in house dust and in soil next to residential structures. Thirteen million or 17 percent of private housing units have interior dust lead levels above Federal guidelines. Similarly, 16 million, or 21 percent, of private housing units have soil lead levels above guidelines.

National public housing estimates for non-intact lead-based paint were not calculated from the national survey data because less than 10 homes in the survey had non-intact paint. Dust and soil lead data also are not presented for public housing because of situations encountered during the field operations; the dust lead data is suspect because a large number of vacant apartments were inspected. About 70 percent of the units sampled did not have exposed soil nearby to collect samples — they were surrounded by pavement. With sample sizes this small, it was not possible to project national estimates.

The following sections summarize the national survey findings. Section 2.2 discusses private housing and Section 2.3 covers public housing. For a more complete and technical treatment of the results, readers are referred to Appendix II, Chapter 2 of this report.

¹³The numbers in parentheses are 95% confidence intervals. See Appendix II, Section 3.4.3 for the methodology used to compute with the confidence intervals.



CITY HEIGHTS

Community Development Corporation

July 29, 2004

Councilmember Scott Peters, Chairman and Committee Members
Land Use and Housing Committee
City of San Diego, % City Administration Building
202 C Street, MS 10A
San Diego, California 92101

RE: Right to Lead Safe Housing Ordinance, LU & H Committee Agenda, August 4, 2004

Dear Chairman Peters and Committee Members:

I am writing on behalf of City Heights Community Development Corporation (CHCDC) to communicate the support resolution of the CHCDC Board of Directors adopted July 22, 2004 regarding the subject Right to Lead Safe Housing Ordinance which is under consideration by the City of San Diego Land Use and Housing Committee on August 4, 2004.

CHCDC was founded by residents in 1981 to address issues of blight and dis-investment in the diverse community of City Heights. We work with our community to create quality affordable housing and livable neighborhoods, to foster economic self sufficiency and stimulate investment. We own, operate and/or serve as managing general partner for 750 units of quality affordable rental housing located at over 50 locations primarily in the mid-city area of San Diego.

Lead Poisoning is still the number one environmental health threat to children under the age of six. We believe that all children have the right to live in a lead-safe home. We strongly urge you to support the Children's Right to Lead-Safe Housing Ordinance. This ordinance will result in a prevention-based, proactive strategy to make all pre-1978 housing lead-safe by 2010 and it will complement the substantial investment by the City in public education and prevention and remediation efforts currently underway and contemplated in City Heights and other older communities through the Lead Safe Neighborhoods Program.

The ordinance addresses prevention by identifying lead-based paint hazards through inspections and requiring repairs to prevent exposure to peeling lead-based paint in rental and owner-occupied homes. It requires protection of workers and strengthens the enforcement ability of the City.

Thank you for your consideration and please contact me at (619) 584-1535 if you have additional questions regarding our support for this proposed ordinance.

Sincerely,

Jay Powell, CHCDC Executive Director

Cc: City Clerk (Attn: Land Use and Housing Committee Docket of August 4, 2004)
Alan Johanns, Asbestos and Lead Program Manager, City of San Diego



July 22, 2004

Councilman Scott Peters
LU&H Committee
City of San Diego
202 C Street.
San Diego, CA 92101

Re: Proposed Lead Hazards Ordinance "Support if Amended"

Dear Councilman Peters and Members of the LU&H Committee:

On behalf of the members of the San Diego County Apartment Association, I would like to share with you some concerns regarding the proposed Lead Hazards Ordinance that will be reviewed by the Land Use and Housing Committee on August 4, 2004. First, SDCAA and its members would like to commend the City of San Diego for their efforts to protect the health and well-being of its youngest citizens, children. Our members take pride in providing quality rental homes for residents. As a member of the Ordinance Committee, SDCAA has attempted to offer constructive input into the process. Although well intended, the current version of the ordinance is not comprehensive, may be unworkable in some instances while redundant requirements will add to the cost of housing in San Diego worsening the Housing Affordability crisis.

The City Manager's report *Lead Safe Neighborhoods Program*, dated March 13, 2002, states that a comprehensive program should include the range of lead hazards found in the home. The ordinance being put forth only addresses lead hazard issues relating to lead paint. According to the San Diego County Childhood Lead Prevention Program, between 1992 and 2003, 460 cases of elevated blood lead levels were reported in the City of San Diego. Only 28 percent of the reported cases of lead poisoning came from sources related to paint, including dust, chips and soil. The proposal leaves 72 percent of lead hazard source problems without a solution.

Transfer of Tenancy

Inspection at turnover of tenancy makes sense, given that roughly 60 percent San Diego's 206,000 rental units experience a turnover in tenancy annually. This means that approximately 124,000 rental units would be inspected each year. In just a few years, inspections at turnover in tenancy will capture the majority of units at least once while others may be inspected multiple times. SDCAA supports the proposed inspections at turnover of tenancy.

The following paragraphs outline redundancies in the ordinance that significantly increases the cost of housing and offer some recommendations to help achieve the goal of lead safe housing.

Transfer of Ownership

The ordinance requires that rental units be inspected during the transfer of ownership. If this requirement could be implemented, it is estimated that it would cost over \$57 million for the roughly 144,265 pre-1978 rental units in the City of San Diego in inspection fees, before any filing fees or

mitigation expenses. In the current sellers market, buyers would be forced to immediately bear the cost of the ordinance deterring investors from purchasing and reconditioning older properties.

SDCAA pointed out at the September 11, 2003, Task Force meeting, California Civil Code, Section 1940-1954.1, only allows property owners/representatives to enter the dwelling unit under very specific conditions. With the exception of emergencies, inspections are restricted to repairs identified and requested by the tenant or upon termination of tenancy. Properties can be exhibited to perspective buyers and lenders but this does not afford the opportunity to inspect for lead hazards, especially behind furniture or other large items that could be covering walls.

SDCAA Proposal

SDCAA recommends that a safety net be created to require that within 90 days of the transaction on the sale of a rental unit that the residents are to receive a copy of the EPA approved *Protect Your Family From Lead In Your Home* pamphlet. This is the same pamphlet residents of pre-1978 housing receive at the inception of tenancy. If the paint becomes unstable during the tenancy, the resident will be instructed to inform the property owner/representative. The property owner must then make repairs.

Inspections by 2010

In addition, to the inspection at turnover of tenancy, the proposed ordinance requires a certified lead inspection of all pre 1978 residences by the year 2010. Again, this is inconsistent with California Civil Code. If this requirement could be implemented, it would also be duplicative if the inspections at turnover in tenancy were implemented. Under this proposal, a property owner would pay \$35k-40k in inspections fees for a 100-unit community and in the next 6 years, inspection fees could cost the industry over \$62,030,080 before mitigation expenses. At this price, smaller property owners would likely be unable to bear the financial costs.

SDCAA Proposal

SDCAA recommends that self-certification be permitted, upon penalty of perjury, as units become vacant, with documentation to be kept on file by the property owner.

Unintended Consequences

Although well intended, the proposed ordinance in its current form has some unintended consequences, which include the following:

- Escalating the financial demands on the City's General Fund to implement the ordinance
- Costly delays and escalating inspection fees due to the lack of capacity in the market to accommodate the increased levels of inspection the ordinance requires, and
- Increasing the pressure to raise rents to compensate for the increased costs, effectively worsening the region's affordable housing crisis.

SDCAA Proposal

In regard to market's ability to supply enough inspectors to meet the demand of the ordinance, again we suggest allowing for self-certification, upon penalty of perjury, which would reduce the demand for inspectors. This can lower the cost of inspection enabling more resources to be used on mitigation as well as helping to sustain housing at affordable levels.

Conclusion

Once again, SDCAA supports quality, safe housing. However, portions of the proposed ordinance go beyond what is possible under state law and what is economically feasible without significantly increasing the cost of housing in San Diego. We sincerely hope you consider these comments and recommendations and we look forward to working with you to develop solutions.

Finally, new interests from organizations that were not previously part of the process have emerged and fresh eyes have identified alternative methods worthy of consideration. These suggestions include targeting areas with high occurrences of reported elevated blood lead levels and prioritizing existing resources in areas of greatest need. SDCAA is supportive of these suggestions as it is estimated that 97 percent of the lead poisoning cases in San Diego occur in six zip codes. However, we urge that any potential program seek out reasonable solutions (consistent with existing laws) and grant monies to address these targeted areas.

If you should have any questions, please feel free to contact me at 858-751-2213. Thank you for your attention to this important issue.

Best Regards,



Alan Pentico
Director of Public Affairs

LU&H AUG 04 2004 #3



San Diego Association of REALTORS®

July 16, 2004

RECEIVED

JUL 20 2004

Ms. Jamie Fox Rice
Office of Councilmember Inzunza
City of San Diego
202 C Street, MS10A
San Diego, CA 92101

Mr. Alan Johanns
Environmental Services Department
City of San Diego
9601 Ridgehaven Court, Suite 310
San Diego, CA 92123

ES/
ENVIRONMENTAL PROTECTION

Re: Lead Hazard Prevention and Control Ordinance

Dear Jamie and Alan,

I want to thank you both for taking the time to meet with me regarding the proposed "Lead Hazard Prevention and Control Ordinance." As you know, I have recently left a position with a City agency to take over the position of Vice President of Government Affairs at the San Diego Association of REALTORS® (SDAR) formerly held by Suzanne McKenna. I respect that the subject ordinance is the product of countless hours of work on the part of staff and a volunteer task force. Further, I acknowledge that Ms. McKenna and several other representatives from SDAR have provided you with an abundance of feedback during this process. With this in mind, I especially appreciate your willingness to consider my comments at this late stage in the process.

I would like to reiterate some of the thoughts that I shared with you in our meeting. First, I wholeheartedly agree that the issue of childhood lead poisoning is an issue of utmost importance that should be given the City's focused attention in order to protect the health, safety and welfare of the children living in our communities. Please do not interpret my comments to be unsupportive of efforts to address this critical health concern. However, I am extremely concerned that the adoption of the ordinance as drafted would result in numerous unintended negative consequences that could outweigh its benefits. Further, I believe that we can achieve the desired result of reducing childhood lead poisoning cases and avoid the detrimental consequences if a more tailored approach is developed.

The following paragraphs outline some of my concerns regarding the avoidable negative consequences of the program as proposed.

First, the ordinance could result in devastating impacts to low-income and/or restricted-income homeowners. By requiring that all homeowners provide lead-safe certifications, these households could be responsible for thousands of dollars for environmental mitigation that they are unable to afford. The result for these families could be devastating; they could be faced with losing their homes. Demographic

2004 OFFICERS

PRESIDENT

Karen F. Peterson, CRS

PRESIDENT-ELECT

Roni Telmosse, GRI, LTC, CRB

VICE PRESIDENT

Philip R. Gagnon, CRB, GRI

TREASURER

Robert F. Kevane, CPA

EXECUTIVE VICE PRESIDENT

John Lomac

2004 DIRECTORS

Chris Anderson

Glenn Bennett

David M. Cabot

Fred Christiansen

Bud Clark, CRB

Courtney Comer

Patricia Donovan

Barbara DuDeck, CRS, GRI

Liz Higgins

Teri J. Hill

Rick Hoffman, e-PRO,
2001 Past PresidentWilbur E. Johnson, ABR, CRS,
GRI, SRES
McKinley Jones, ABR

K.J. Koljonen, GRI

Ginny Lee, CRS, GRI

Mark M. Marquez

Donna Sanfilippo

Lori Staehling, GRI, LTC

Fiona Theseira, ABR, GRI, SRES

Maria Turfler, CRS, GRI, LTC

Erik A. Weichelt



statistics suggest that this issue would be prevalent, as the data shows that the lowest-income families live in older housing stock where lead hazards are likely to exist.

If the city chooses to implement such a mandate, the City should first ensure that grants and/or low-interest loans are available to assist these families in the mitigation. In addition, to avoid unnecessary liability, the city should also ensure that variance procedures are in place to address the myriad personal circumstances that will need to be addressed as a result of this broad-brushed approach.

A second and equally important concern is the impact to housing affordability. It has been nearly two years since the City Council declared a "Housing State of Emergency", yet the Affordability Index has dropped by over 10% during that time. The method with which the subject proposed ordinance addresses the issue of lead poisoning directly conflicts the City priority of addressing the affordability crisis. In fact, the approach taken in the proposal will further exacerbate the crisis by placing an expensive regulatory mandate which will result in higher rents and sales prices.

This impact will be felt the strongest in the first-time homebuyer market. As we know, it is especially difficult for first-time homebuyers to enter the market. In recent months, the City Council has been making significant strides towards affording low- and moderate-income families with first-time homebuyer opportunities. However, these efforts will be negated as a consequence of the costs imposed by this ordinance. As a result of the heavily weighted sellers' market, all costs for inspection and mitigation will be directly passed to the buyer. I have received conservative estimates of an average \$5,000 per multi-family unit and \$7,000 per single-family unit to mitigate for the lead hazards. This expense will most certainly push the cost of housing out of reach for those wishing to attain homeownership.

An additional concern is that the City and the private market are not equipped to administer such an ordinance. The implementation of this ordinance would require an expansion of human and technical resources to support the cumbersome program at a time when the City Manager is desperately trying to scale back in all City departments. Further, it is doubtful that the "Certified Lead Paint Inspector" market has anticipated the increase in work load. The requirement to certify nearly 340,000 dwelling units will most certainly drive the costs of certification and mitigation to extremes.

Underlying the issues that I have outlined is the broad method with which the issue of lead poisoning has been addressed. The ordinance takes a very broad-brushed approach to addressing only one source of lead poisoning. According to the San Diego County Childhood Lead Prevention Program (SDCCLPP) for the period of 1992 and 2003, there were 460 reported cases of childhood lead poisoning in the City of San Diego. This equates to 12 cases a year that could be attributed to lead paint in the home, while the proposed ordinance will impact approximately 70% of the City's 1.2 Million person population or approximately 890,000 people. Astoundingly, the economic impact of this approach could range from \$250 Million to \$3 Billion over a five year period!!

I respectfully submit the following alternative for your consideration. My proposed approach would target the City's efforts in such a manner that City resources could be used efficiently and minimize the unintended consequences, while ensuring the maximum impact could be made.

The answer, I believe, has to do with targeting the resources to the geographic areas where there is a documented prevalence of childhood lead poisoning. Abundant data exists that would allow the City to target existing and future resources to assist with this process. To point, according to the SDCCLPP data, 97% of the City's childhood lead poisoning cases reported during the 11-year period of 1992-2003 occurred within only six zip codes. By contrast, concentrated efforts by the County of San Diego's Lead-Based Paint Hazard Control Program have, in some cases, occurred in zip codes where a much lower

number or even no cases of poisoning have occurred. Other information can also be used to further prioritize resources, such as using the existing Neighborhood Code Compliance database that includes years of statistics to identify properties that have a history of code violations. Current state law provides that dwelling units with lead hazards are considered to be substandard. The authority to enforce already rests with code enforcement division to proactively target these offenders.

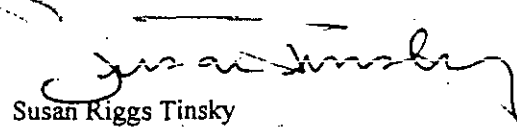
This approach is good public policy. It allows us to redirect existing resources to target high-risk communities, rather than create a new bureaucracy and bloated lead paint inspection and remediation industry to administer and implement the program.

Finally, according to the SDCCLPP, during the 11-year period only 28% of the reported cases of lead poisoning come from sources related to paint, including dust, paint chips, and soil. Of great concern is that 72% of the cases occurred from other sources that have not been addressed in the proposed ordinance. As discussed in the March 13, 2002 City Manager's report (Lead Safe Neighborhoods Program MR 02-057), a comprehensive program should include the range of lead hazards found in the home. A comprehensive program should include working with households in the high-risk zip codes to address, not only lead paint hazards, but also other sources of lead poisoning that lead to the vast majority of poisoning cases.

I would urge you to consider an intermediary step of targeted enforcement rather than taking the broad-brushed approach as proposed in the current draft of the ordinance. I am available to assist in your efforts to more thoroughly develop this alternative. Additionally, a number of members of Task Force members have been receptive to this alternative and have also expressed keen interest in its pursuit.

Finally, I respectfully request that the concerns that I have outlined and the proposed alternative be presented to the Land Use and Housing Committee for its consideration.

Best Regards,



Susan Riggs Tinsky
Vice President, Government Affairs
(858) 614-4709



The San Diego Association of REALTORS® (SDAR) have multiple concerns regarding the avoidable negative consequences that would result from the adoption of the proposed Lead Hazard Prevention and Control Ordinance that is docketed to be heard by the Land Use and Housing Committee on August 4, 2004.

- The ordinance, as drafted, will disproportionately impact on low-income households. Lower-income households are more likely to live in older housing stock.
- The ordinance, as drafted, could result in devastating impacts to low-income and/or restricted-income homeowners. Requiring all homeowners provide lead-safe certifications, low and/or restricted income households could be responsible for thousands of dollars for environmental mitigation that they are unable to afford. These families would be required to over-extend themselves financially in order to meet the requirements of the ordinance and could even be faced with losing their homes.
- The method with which the proposed ordinance addresses the issue of lead poisoning directly conflicts the City's priority of addressing the housing affordability crisis. It has been nearly two years since the City Council declared a "Housing State of Emergency", yet the Affordability Index has dropped by over 10% during that time. The approach taken in the proposal will further exacerbate the crisis by placing an expensive regulatory mandate which will result in higher rents and sales prices.
- The impacts of the ordinance, as drafted, will be strongly felt in the first-time homebuyer market. In recent months, the City Council has been making significant strides towards affording low- and moderate-income families with first-time homebuyer opportunities. These efforts will be negated as a consequence of the costs imposed by this ordinance. As a result of the heavily weighted sellers' market, all costs for inspection and mitigation will be directly passed to the buyer. Mitigation has conservatively been estimated at an average \$5,000 per multi-family unit and \$7,000 per single-family unit.
- The City structure and the private market are not equipped to administer such an ordinance at this time. The implementation of this ordinance would require an expansion of human and technical resources to support the cumbersome program at a time when the City Manager is desperately trying to scale back in all City departments. Further, the "Certified Lead Paint Inspector" market has not anticipated the increase in work load. The requirement to certify nearly 340,000 dwelling units will most certainly drive the costs of certification and mitigation to extremes.
- The ordinance takes a very broad-brushed approach to addressing only one source of lead poisoning. The ordinance will only address approximately 28% of lead poisoning cases.
- According to the San Diego County Childhood Lead Prevention Program (SDCCLPP) for the period of 1992 and 2003, there were 460 reported cases of childhood lead poisoning in the City of San Diego. This equates to 12 cases a year that could be attributed to lead paint in the home, while the proposed ordinance will impact approximately 70% of the City's 1.2 Million person population or approximately 890,000 people.
- The economic impact of the ordinance, as drafted, could range from \$300 Million to \$3 Billion over a five year period.

An alternative approach to addressing childhood lead poisoning would target the City's efforts in such a manner that City resources could be used efficiently and minimize the unintended consequences, while ensuring the maximum impact could be made. As an alternative to the proposed ordinance, SDAR would propose more targeted efforts to ensure that resources are concentrated in the geographic areas where the lead poisoning cases occur. The benefits of a more targeted approach are many. An alternative program would:

- A more targeted ordinance could strive to address 100% of the causes of childhood lead poisoning cases rather than 28% as proposed in the ordinance, as drafted. As discussed in the March 13, 2002 City Manager's report (Lead Safe Neighborhoods Program MR-02-057), a comprehensive program should include the range of lead hazards found in the home. A comprehensive program should include working with households in high-risk zip codes to address, not only lead paint hazards, but also other sources of lead poisoning that lead to the vast majority of poisoning cases.
- A more tailored approach would enable the City to work proactively with low and/or restricted income families to address the financial burden of mitigation.
- A tailored approach would target existing and future resources to the geographic areas where the majority of all cases occur (not just those resulting from lead paint) in order to make the maximum impact. According to the SDCCLPP data, the vast majority of the City's childhood lead poisoning cases reported during the 11-year period of 1992-2003 occurred within six zip codes.
- A tailored approach would use other information sources to further prioritize resources, such as using the existing Neighborhood Code Compliance database that includes years of statistics to identify properties that have a history of code violations. Current state law provides that dwelling units with lead hazards are considered to be substandard. The authority to enforce already rests with code enforcement division to proactively target these offenders.
- A tailored approach would result in good public policy. It allows us to redirect existing resources to target high-risk communities, rather than create a new bureaucracy and bloated lead paint inspection and remediation industry to administer and implement the program.

Councilman Scott Peters, Chair and Members
Land Use and Housing Subcommittee
City of San Diego
202 C Street
San Diego, CA 92101



RE: SUPPORT for the Lead Hazard Prevention and Control Ordinance

Dear Chairman Peters and Council Members:

On behalf of San Diego Baykeeper, a grassroots organization dedicated to protecting and restoring the region's bays, coastal waters and watersheds, I am writing to urge you to support the Lead Hazard Prevention and Control Ordinance.

Lead poisoning is the number one environmental threat to children under the age of six. It interferes with the development of the brain, nervous system, and other organs such as the kidneys. Lead poisoning has been linked to permanent reduction in children's IQ, learning and reading disabilities, hyperactivity, behavioral problems, as well as impaired growth and hearing loss. There are no medical treatments to reverse the affects of lead poisoning, however, such poisoning is preventable.

The Lead Hazard Prevention and Control Ordinance, also known as the "Children's Right to Lead-Safe Housing Ordinance," will significantly reduce the number one source of childhood lead poisoning in the City of San Diego. The ordinance will provide a comprehensive course of action to address the problem of lead in San Diego's housing stock. Landlords and home owners will be required to repair lead hazards. Clear standards and guidelines for such repairs will be set forth in the ordinance and key places, such as home improvement stores, will have information about lead safe work practices. The ordinance will require increased inspections and repair to eliminate and/or control household lead hazards and significant penalties will be enforced against those in extreme cases of non-compliance.

All children, regardless of where they live, in a rental unit or owner-occupied housing should live in a lead-safe house. The ordinance addresses all types of housing facilities and we feel it is the best mechanism to solve the childhood lead poisoning problem in the City of San Diego.

Sincerely,

Angie Neeleman
Legal Intern,
San Diego Baykeeper

19 July, 2004

Councilmember Scott Peters
Chair, Land Use & Housing Committee
202 C St.
San Diego, CA 92101

Dear Councilmember Peters,

I am writing to urge you to **support the Children's Right to Lead-Safe Housing Ordinance**. As the Chair of the Land Use & Housing Committee, I hope you will take leadership in advancing this critical legislation that will protect children and families.

As a former lead poisoning prevention advocate, I am heartened to learn that San Diego is considering the type of measures that can actually reduce lead hazards and protect children from the most dangerous environmental health hazard in the country.

Because lead poisoning affects low-income families and people of color disproportionately, this totally preventable hazard has been left largely unaddressed *too long*. I spent a year offering workshops to parents in Portland, OR, teaching them to identify lead hazards and how to try to keep them under control through cleaning methods. As wonderful as education can be, it never addresses the root of the problem: removing and eliminating lead hazards from homes.

It is unjust and unreasonable to leave prevention up to families to learn proper mopping methods to protect their children. As a community---as especially you as a leader of this city---we must make it everyone's responsibility to eliminate lead hazards, not just clean up the dust from deteriorating lead-based paint.

Every child has a right to a safe home free from lead hazards. Passing the Children's Right to Lead-Safe Housing Ordinance will set a standard to eliminate the danger of lead poisoning at its root, ensuring that, at least in our city, children are finally afforded the protection and prevention they deserve.

Please bring pass this ordinance forward to the City Council as soon as possible. The longer we wait, the more children's lives will be damaged by lead.

Thank you,



Laura Benson
3651 Louisiana St. #203
San Diego, CA 92104



SAN DIEGO ORGANIZING PROJECT
A Member of the PICO Network

000496

July 15, 2004

Hon. Scott Peters
Chairperson, Land Use and Housing Committee
City of San Diego
202 C Street
San Diego, CA 92101

Dear Councilmember Peters:

We are writing on behalf of the San Diego Organizing Project (SDOP) requesting your support for the Children's Right to Lead-Safe Housing Ordinance.

As you know, under the ordinance the City will pursue a preventive and proactive strategy by ensuring that all pre-1978 housing is made lead-safe before 2010, upon the sale of the home, and at each rental re-occupancy. The 40,000 families of the SDOP member congregations recognize the urgency in creating a safe living environment for our children.

Councilmember Peters, we want to urge you and the members of the Land Use and Housing Committee to vote to support this very important ordinance. Our children need and deserve this kind of protection.

Sincerely,

Yolanda Burruel
Co-Chair

Bishop Roy Dixon
Co-Chair

cc: Land Use and Housing Committee

4305 University Ave., Suite 545, San Diego, CA 92105
Telephone: 619-285-0797 • Fax: 619-285-9283 • www.sdop.net

Transforming People, Changing Communities

PREPARED BY	
DATE	

	DATE
--	------

7/21/04

Mi nombre es Rosa Ines
yo pienzo que esta Ordenanza para
que se quite el plomo de las casas
debe de pasar porque hay muchos
ninos contaminados con plomo,
principalmente en las comunidades
de Logan y Sherman.
yo tengo nietos pequeños y no
me gustaria que se envenenaran con
plomo.

Me gustaria mucho que pasara esta
ley para que los dueños sean obligados
a reparar todos los peligros de
plomo en sus casas que rentan
a la comunidad especialmente si
en esta casa viven ninos menores
de 6 años.

Gracias

Rosa Ines F

A quien Corresponda. 7-12-04

Yo estoy de acuerdo q en que esta

Ley sea aprobada por la salud de

los niños pues he conocido como
niños estan contaminados de el
plomo y lo danoso que es

Yo tengo un niño de 3 años

y diceo tenerlo fuera de peligro

de contaminacion de plomo.

Ofrecina Gaitan.

Aguirre Corresponde

07-05-04

Yo Bertha A Salazar

Quiero que pase la ley para que
no haya casas con plomo
para que nuestros niños no
estén en peligro
y así comprar las casas
confiablemente.

Gracias

A. Salazar

Bertha Salazar

7/23/64

My name is Argelia Estrada
yo quiero que se apruebe
esta Ordenanza para que las
casas sean libres de plomo y los
niños no vivan en hogares que la
pintura se este cayendo y se
envenenen con el plomo de la pintura
porque sabemos que la mayor parte
de envenenamiento por plomo viene
de la pintura que esta en las
casas construidas antes de 1978,
las cuales los dueños no quieren
arreglar es por eso que yo
apoyo esa ordenanza

Argelia Estrada

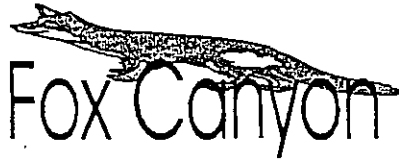
July 20-04

A quien corresponda;

Por medio de este escrito yo doy mi apoyo a esta ordenanza del derecho de los niños a viviendas sin peligro de plomo, a mi no me gustaria ni a ningun padre de familia que mis hijos sigan inhalando o que esten expuestos al plomo, de esta manera me gustaria que todas las viviendas esten libres de este nocivo metal..

Sinceramente;

Armando Villaseñor S.



Neighborhood Association, Inc. A Nonprofit Corporation

4916 Lantana Drive
 San Diego, Ca 92105-2941
 (619) 282-2788, Fax 640-5310
FoxCanyonN@aol.com

August 3, 2004

Honorable Scott Peters, Chair
 C/O: Christina Cameron
 Committee Consultant
 Land Use and Housing Committee
 Via E-mail: CMCameron@sandiego.gov

RE: *REPORT No. 04-178*

Dear Mr. Chair and Members of the Committee

We come before you to request your consideration of a NO vote on the matter of the Lead Paint Ordinance. Several points to consider are below:

- 1] The ordinance is highly intrusive into the impoverished life and financial matters of the elderly, indigent and disable. For whom there's NO mitigation and protection built-in this ordinance. In addition, the power to inspect homeowner-occupied interiors, granted to NCCD, is not warranted and greater to that of criminal enforcement. Unwarranted inspections and remedial procedures are an undo burden on those homeowners hanging by a financial thread and unable to afford remediable action. In such circumstances, this ordinance may price these classes of people out of their homes.
- 2] The Association, from time to time, has asked for CDBG Grants to paint the homes of indigent homeowners FREE and with volunteer labor [FaceLifts]. The lead scare has completely stopped this urgently needed help to continue the revitalization of our blighted neighborhoods. Moreover, even if, we were to find solutions, the interior of such homes are not covered by any grant at all.
- 3] There is NO provision built-in on this proposed ordinance to provide financial help to indigent homeowners.
- 4] There's NO provision for mandated tests and correction at SALE [es row] time, when such needs to occur to turn a LEAD FREE structure/home to a new homeowners.

MISSION: To serve as a link to resources for the residents and to function as a catalyst for change in the neighborhood and the community-at-large. Whereby, we can become the community of choice within CITY HEIGHTS.

www.neighborhoodlink.com/sandiego/foxcan
 WEB SITE

August 3, 2004
Page 2

- 5] Test and lead free properties should be certified at time of entrance to the rental market and built-in the tax certificate.

Fory our consideration and attention to these matters, we are grateful a will, again, ply a NO vote on this matter, at this time.

Respectfully Submitted

Jose Lopez, President

RECEIVED
07 OCT 11 PM 12:13
CITY CLERKS OFFICE
SAN DIEGO, CA

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 533-5800

DATE: February 22, 2008
TO: Councilmember Donna Frye
FROM: City Attorney
SUBJECT: Lead Hazard Prevention and Control Ordinance –
Comments of Ms. Theresa Quiroz

During the Council hearing of October 30, 2007, Councilmember Frye requested the City Attorney to provide an analysis of the proposed Lead Hazard Prevention and Control Ordinance [Ordinance] in response to comments made at that hearing by Ms. Theresa Quiroz. Essentially, Ms. Quiroz stated that, if adopted, the Ordinance would codify the presumption that 65% of homeowners in the City of San Diego are guilty of a misdemeanor because their homes were constructed prior to 1979; that their property will immediately be designated as a public nuisance; and that their 4th Amendment rights will be violated. Ms. Quiroz discussed these concerns in more detail in an email dated October 27, 2007, in which she also commented that the Ordinance punishes a property owner for past conduct, i.e., applying lead-based paint to housing, which was not an offense at the time it was committed. As explained below, these comments misinterpret the Ordinance.

DISCUSSION

I. BACKGROUND

The United States Congress has found that “[p]re-1980 American housing stock contains more than 3,000,000 tons of lead in the form of lead-based paint, with the vast majority of homes built before 1950 containing substantial amounts of lead-based paint.” 42 U.S.C. § 4851(3). “[A]t low levels, lead poisoning in children causes intelligence quotient deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems.” 42 U.S.C. § 4851(2). According to the Consumer Product Safety Commission: “[t]he seriousness of the lead poisoning problem is well documented.” 42 FR 44198 (Sept. 1, 1977). “[T]he ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children.” 42 U.S.C. § 4851(4).

Councilmember Frye
February 22, 2008
Page 2

Further, the California Legislature has declared that "childhood lead exposure represents the most significant childhood environmental health problem in the state today; . . . that at least 1 in every 25 children in the nation has an elevated blood lead level; and that the cost to society of neglecting this problem may be enormous." Cal. Health & Safety Code § 124125. "Levels of lead found in soil and paint around and on housing constitute a health hazard to children living in the housing." Cal. Health & Safety Code § 124150(e). "[T]he danger posed by lead-based paint hazards can be reduced by abating lead-based paint or by taking interim measures to prevent paint deterioration. . . ." 42 U.S.C. § 4851(6).

Hazardous levels of lead were commonly used in the manufacture of residential paint [lead-based paint] before being banned as of February 28, 1978. 16 CFR § 1303.1. Thus, "a home built before 1978 is likely to have surfaces painted with lead-based paint."¹ "Even if the lead-based paint has been covered with new paint or another covering, cracked or chipped painted surfaces can expose the lead-based paint" ² To be sure the paint is not lead-based, it must be tested by a qualified professional.³ The U.S. Department of Housing and Urban Development warns owners and residents of homes built before 1978 to treat peeling paint as a lead hazard unless proven otherwise.⁴ According to a 2000 Census Profile compiled by the San Diego Association of Governments, approximately 14% of the housing units in the City of San Diego were built before 1950. Approximately 66% of the housing units in the City of San Diego were built before 1979.⁵

Given these alarming facts, a primary purpose of the Ordinance is to prevent lead poisoning in children by protecting them from exposure to lead hazards, primarily in the form of lead-contaminated dust or soil from deteriorated lead-based paint in or around housing and from activities that disturb lead-based paint without using proper containment. Ordinance § 54.1002(a). Deteriorated lead-based paint is paint that is cracking, flaking, chipping, peeling, or otherwise separating from the substrate of the dwelling. Ordinance § 54.1003. Lead hazards in the form of deteriorated paint may be corrected using lead safe work practices.

¹ Reducing Lead Hazards When Remodeling Your Home, EPA 747-K-97-001, page 2 (Sept. 1997).

² *Id.*; U.S. Department of Housing and Urban Development, Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing pp.5-11 through 5-15 (June 1995).

³ Reducing Lead Hazards When Remodeling Your Home, EPA 747-K-97-001, page 3 (Sept. 1997).

⁴ U.S. Department of Housing and Urban Development, Office of Healthy Homes, Lead Brochure. <http://www.hud.gov/offices/lead/healthyhomes/lead.cfm>.

⁵ SANDAG Census 2000 Profile City of San Diego p.3. www.sandag.org (June 12, 2003).

Councilmember Frye
 February 22, 2008
 Page 3

II. PRESUMPTION OF GUILT

A. The Ordinance does not presume owners of pre-1979 homes are guilty of a misdemeanor.

With the above context in mind, we address the first comment, which is that the Ordinance presumes that all homeowners who own pre-1979 housing are guilty of a misdemeanor. This comment confuses "lead-based paint" with "lead hazard." The Ordinance contains the *presumption that paint on housing built before January 1, 1979, is lead-based paint.* Ordinance § 54.1007(a). However, the Ordinance does not prohibit lead-based paint on housing. It prohibits the creation or maintenance of a *lead hazard*. Ordinance § 54.1004. Lead-based paint alone is not a lead hazard. The lead-based paint must be deteriorated (cracking, flaking, chipping, peeling, or otherwise separating from the substrate of the dwelling) over a certain surface area or otherwise be a health hazard in order to constitute a lead hazard. Ordinance § 54.1003. Plus, the Ordinance provides a method for a homeowner to rebut the presumption by showing that the dwelling does not have lead-based paint. Ordinance § 54.1007(b). So, contrary to the comment, the Ordinance does not presume that all owners of pre-1979 housing are guilty of a misdemeanor.

B. The presumption does not relieve the City of its burden to prove guilt beyond a reasonable doubt in a criminal case.

In addition, the application of a presumption in a criminal case is governed by both federal and state constitutional law and the California Evidence Code. *Ulster County Court v. Allen*, 442 U.S. 140, 156 (1979); *People v. McCall*, 32 Cal. 4th 175, 182-83 (2004), *cert. denied*, 542 U.S. 923 (2004); *People v. Roder*, 33 Cal. 3d 491, 497 (1983). In a criminal case, the prosecution has the burden to prove each element of the offense beyond a reasonable doubt. Cal. Penal Code § 1096; Cal. Evid. Code § 501; *People v. Mower*, 28 Cal. 4th 457, 478-79 (2002). A presumption does not operate to relieve the prosecution of its burden of proof. *Ulster County Court*, 442 U.S. at 156-67; Cal. Evid. Code §§ 501, 600-607; *McCall*, 32 Cal. 4th at 183-84; *Roder*, 33 Cal. 3d 491, 497-507 (1983); *People v. Beltran*, 157 Cal. App. 4th 235, 245 (2007). Thus, the presumption in the Ordinance does not violate the presumption of innocence and would not relieve the City from proving defendant's guilt beyond a reasonable doubt in the event the City brings a misdemeanor criminal action for a violation of the Ordinance.

III. PUBLIC NUISANCE

Similarly, the second comment, which is that pre-1979 housing will immediately become a public nuisance under the Ordinance, also confuses "lead-based paint" with a "lead hazard." The Ordinance does not declare that a home with lead-based paint is a public nuisance, and the Ordinance does not declare that a home built prior to 1979 is a public nuisance. Rather, the Ordinance declares that a lead hazard, as defined in the Ordinance, is a public nuisance. Ordinance § 54.1001(f). So, under the Ordinance, housing does not become a public nuisance merely because it was built before 1979 and/or contains lead-based paint.

Councilmember Frye
 February 22, 2008
 Page 4

A. Council has authority to decide that a lead hazard constitutes a public nuisance.

A public nuisance is anything which is injurious to health and affects an entire community or neighborhood or any considerable number of people, even if not all persons are affected equally. Cal. Civ. Code §§ 3479, 3480; Cal. Penal Code § 370. A city legislative body has authority to declare by ordinance that certain conditions or activities constitute a public nuisance. Cal. Const. art. XI, § 7; Cal. Gov't Code § 38771; *City of Costa Mesa v. Soffer*, 11 Cal. App. 4th 378, 383 (1992). Once a legislative body makes such a declaration, a court will not substitute its independent judgment for that of the city council that a certain condition or activity is significant enough to constitute a nuisance. *City of Bakersfield v. Miller*, 64 Cal. 2d 93, 100 (1966), *cert. denied*, 384 U.S. 988 (1966). The court's role is limited to deciding whether a public nuisance exists, as defined by the ordinance, and whether the ordinance is constitutionally valid. *Id.* A legislative body has broad discretion to determine what the public interests are and the measures necessary to protect them, and that determination will not run afoul of due process principles unless it is "palpably unreasonable, arbitrary or capricious, having no tendency to promote the public welfare, safety, morals or general welfare." In other words, there must be some rational basis for the determination. *Thain v. City of Palo Alto*, 207 Cal. App. 2d 173, 186-87 (1962).

Thus, the Council has the authority to declare, by way of the Ordinance, that a lead hazard as defined in the Ordinance constitutes a public nuisance. In fact, Council has already made a similar declaration in the City's existing lead hazard abatement ordinance.⁶ Given the abundance of evidence associating deteriorated lead-based paint in housing with lead poisoning in children, the devastating and irreversible health effects of lead poisoning in children, the likelihood that housing constructed prior to 1979 contains lead-based paint, and the prevalence of pre-1979 housing in the City, a determination that a lead hazard as defined in the Ordinance constitutes a public nuisance is not unreasonable, arbitrary, nor capricious.

B. The remedies for a public nuisance violation may include a civil action, criminal case, and abatement.

A public nuisance defined by ordinance is a nuisance *per se*. *Soffer*, 11 Cal. App. 4th at 382. Cities typically declare nuisances *per se* in the areas of zoning, building, environmental protection, noise, and similar fields. California Municipal Law Handbook § 9.2.50(D) (2006 ed.). Remedies for a nuisance violation may include a civil action, a criminal proceeding, and abatement of the nuisance at the expense of the person creating or maintaining it. Cal. Civil Code § 3491; Cal. Gov't Code § 38773; *Flahive v. City of Dana Point*, 72 Cal. App. 4th 241, 244 (1999).

Due process is required for the abatement of a public nuisance. Due process requirements are satisfied by providing adequate notice and a meaningful opportunity to be heard on the matter.

⁶ SDMC § 54.1001(e).

Councilmember Fryc
 February 22, 2008
 Page 5

Mohilef v. Janovici, 51 Cal. App. 4th 267, 285 (1996). However, if an imminent life safety hazard exists that requires immediate correction or elimination, the City may take the minimum action necessary to eliminate the immediacy of the hazard, absent prior notice to the property owner, without violating due process principles. Cal. Gov't Code § 38773; *Thain*, 207 Cal. App. 2d at 189; *Leppo v. City of Petaluma*, 20 Cal. App. 3d 711, 718 (1971). The Ordinance provides for all of these potential remedies along with the requisite due process protections. Ordinance § 54.1013; SDMC Chapter 1, Article 2, Divisions 3-10

IV. 4TH AMENDMENT ISSUE

A. A homeowner is not required to hire a government agent to perform a lead inspection.

The third comment is based on the misperception that the Ordinance would require a homeowner to allow a government official into the home to conduct a search without a warrant and without probable cause. This misperception is based on a misreading of sections 54.1007(c) and 54.1013 of the Ordinance. Essentially, section 54.1007(c) provides that once a homeowner is on notice that a lead hazard exists on the property, the homeowner must expeditiously correct it and subsequently provide proof of compliance. Proof of compliance is shown by submitting a form showing that the identified lead hazards were corrected and passed a clearance inspection conducted by a state certified lead inspector. Ordinance § 54.1007(c)(2), (3). The inspection is not conducted by a government official, but by a professional, selected by the homeowner, who has been certified by the state as having the necessary training and expertise to safely and properly conduct lead clearance inspections. Ordinance § 54.1003.

B. A warrant is required to enter a home absent an emergency or consent.

Further, section 54.1013 authorizes the Director or designee to conduct a reasonable home inspection when a violation of the Ordinance is suspected. However, unless the homeowner consents or exigent circumstances exist, the Director would be required to obtain an administrative inspection warrant before entering the home. Ordinance § 54.1013(b)(1); *see Flahive*, 72 Cal. App. 4th at 246. Although specific to this Ordinance and more limited in scope, this section also is comparable to section 12.0104 of the Municipal Code which provides authority to inspect property when *any* Municipal Code or State law violation is suspected. Thus, the Ordinance does not run afoul of the 4th Amendment.

V. PUNISHMENT FOR PAST CONDUCT

Finally, the fourth comment contends that the Ordinance impermissibly punishes a homeowner for the past application and maintenance of lead-based paint. That comment also misinterprets the Ordinance. First, as stated above, the Ordinance does not make the use of lead-based paint a crime. The Ordinance makes it unlawful to create or maintain a lead hazard. Ordinance § 54.1004.

Councilmember Frye
 February 22, 2008
 Page 6

A. The Ordinance is not an ex post facto law

Second, the Ordinance is prospective only, not retroactive. A criminal statute which punishes an act that was innocent when committed is an ex post facto law in violation of both the federal and state constitutions. *Collins v. Youngblood*, 497 U.S. 37, 41 (1990); *People v. Snook*, 16 Cal. 4th 1210, 1220-21 (1997). The question in determining whether a penal statute is an ex post facto law is whether the legislative aim was to punish an individual for past activity or to regulate a present situation. *De Veau v. Braisted*, 363 U.S. 144, 160 (1960).

It is abundantly clear that the purpose of the Ordinance is to eliminate existing lead hazards, particularly in housing, so as to limit children's exposure to lead. In other words, its intent is to regulate a present, dangerous condition posed by lead in housing. To that end, the Ordinance requires that once a homeowner is on notice that a lead hazard exists on the property, the homeowner must expeditiously correct it and subsequently provide proof of compliance. Ordinance § 54.1007(c)(2), (3). The prohibition on creating or maintaining a lead hazard becomes effective only when the Ordinance becomes effective. So, the Ordinance does not punish a homeowner for the application of lead-based paint to the home before the Ordinance effective date, nor for merely having lead-based paint on housing. Moreover, it does not punish a property owner for the creation or maintenance of a lead hazard before the Ordinance is passed. The conduct subject to punishment is the creation or maintenance of a lead hazard *after* the Ordinance becomes effective. Thus, the Ordinance is not an ex post facto law. *See Chicago & Alton Railroad Co. v. Tranbarger*, 238 U.S. 67, 73 (1915) (no ex post facto violation where railroad was subject to punishment not for original construction of embankment but for maintenance of embankment in manner prohibited by later enacted law).

B. A property owner has no constitutional right to maintain property as a public nuisance

Finally, the fact that a building was built in compliance with the law when it was constructed does not immunize it from later becoming a public nuisance if a later enacted ordinance makes its condition a public nuisance and the condition continues uncorrected after the ordinance becomes law. *Miller*, 64 Cal. 2d at 101. A property owner has no constitutional right to maintain property as a public nuisance. *Leppo*, 20 Cal. App. 3d at 717. In this case, the City is not imposing punitive sanctions for the use of paint in past decades, but eliminating a presently existing danger to the public. *See Knapp v. City of Newport Beach*, 186 Cal. App. 2d 669, 681 (1960) (date of construction of building or enactment of law under which it was declared a public nuisance is irrelevant; present dangerous condition of building is real criterion for determining violation). Constitutional principles do not require the public to tolerate a public nuisance ad infinitum simply because the property was not in violation of the law when originally constructed. *Miller*, 64 Cal. 2d at 102. Thus, the Ordinance does not improperly subject past conduct to sanctions.

Councilmember Frye
February 22, 2008
Page 7

CONCLUSION

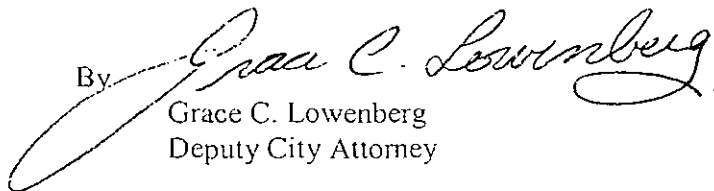
The Ordinance does not presume that owners of housing built prior to 1979 are guilty of a misdemeanor. The Ordinance does presume that paint on pre-1979 housing is lead-based paint. That presumption does not violate the presumption of innocence. In a criminal case alleging a violation of the Ordinance, the City maintains the burden to prove a property owner guilty beyond a reasonable doubt.

The Ordinance does not declare that pre-1979 housing and/or housing with lead-based paint is a public nuisance. The ordinance declares that a *lead hazard* is a public nuisance. Paint on pre-1979 housing alone is not a lead hazard. The paint must be deteriorated (cracking, flaking, chipping, peeling, or otherwise separating from the substrate of the dwelling) over a certain surface area or otherwise be a health hazard.

The Ordinance does not provide for procedures in violation of the 4th Amendment. Absent exigent circumstances or the property owner's consent, the City must obtain a warrant prior to entering the home.

Finally, the Ordinance does not punish property owners for a lead hazard on the property before the Ordinance becomes effective, but for creating or maintaining a lead hazard on the property after that time. Thus, it is prospective in effect and does not improperly punish past conduct.

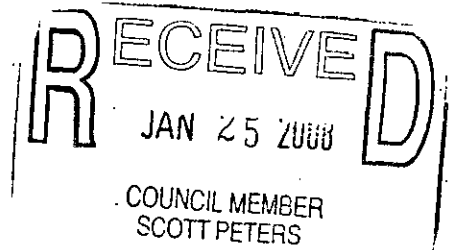
MICHAEL J. AGUIRRE, City Attorney

By 
Grace C. Lowenberg
Deputy City Attorney

GCL:mb
MS-2008-1
cc: City Councilmembers
Mayor Sanders
Andrea Tevlin
Elmer Heap
Chris Gonaver
Linda Pratt
Alan Johanns
Diane Silva-Martinez



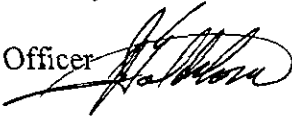
The City of San Diego
MAYOR JERRY SANDERS



MEMORANDUM

DATE: January 23, 2008

TO: Honorable Council President Peters and City Councilmembers

FROM: Jay M. Goldstone, Chief Operations Officer 

SUBJECT: Lead Hazard Prevention and Control Ordinance Cost Recovery Fee Information per October 30, 2007 Council Meeting, Item S150.

This memorandum provides the cost-recovery fee information requested at the October 30, 2007 Council Meeting, Item S150, associated with the education and outreach, and enforcement of the Lead Hazard Prevention and Control Ordinance approved by Land Use and Housing Council Committee on August 4, 2004. The following is the requested information:

Cost Recovery Fee Calculations for Development Services Department (DSD) Permit Fees

Construction activities impacting lead paint and not performed using lead-safe work practices can be a significant source of lead hazards. A major component of the Lead Hazard Control and Prevention Ordinance is the regulation and education of contractors in the use of lead-safe work practices. The cost recovery, regulatory fee increase of \$31 will be added to all of the following permit categories for structures built before 1979:

- Building Permit for Residential Room Addition
- Building Permit for Residential Remodel
- Building Permit for Non-residential Addition/Alterations
- Building Permit for Commercial Tenant Improvement
- Demolition/Removal Permit

Estimated annual revenue associated with this cost recovery fee is **\$119,580**. See Attachment 1 for details on how the fee was calculated in accordance with Administrative Regulation 95.25 and Attachment 2 for a current and proposed fee schedule.

Page 2

Honorable Council President Peters and City Councilmembers

January 23, 2008

Lead-Safe and Lead-Free Application Processing and Associated Enforcement Cost Recovery Fee

As proposed in the Lead Hazard Control and Prevention Ordinance approved by Land Use and Housing Council Committee on August 4, 2004, beginning six months after the effective date of the Ordinance, certain residential real estate transactions as identified in the proposed ordinance involving properties built before 1978 will require a lead risk assessment and correction of lead hazards. Ordinance language for this provision can be found Section 54.1010. An application shall be submitted to the City to initiate compliance with this requirement. All applicants will be required to pay a cost recovery, regulatory fee of \$40 in connection with the application for the issuance of a lead-safe or lead-free certificate. Estimated annual revenue associated with this cost recovery fee is **\$238,520**. See Attachment 3 for details on how the fee was calculated in accordance with Administrative Regulation 95.25.

Jay M. Goldstone

Chief Operations Officer

cc: Elmer Heap, Deputy Chief, Community Services
Jill Monroe, Mayor's Office
Chris Gonaver, Environmental Services Department
Alan Johanns, Environmental Services Department

Attachments: 1. Cost recovery fee calculations related to DSD permits
2. Fee schedule for current and proposed DSD permit fees
3. Cost recovery fee calculations related to "point of sale" language

Cost Recovery Fee Calculations for Development Services Department (DSD) Permit Fees

The cost recovery, regulatory fee of \$31 and annual revenue projected from inspection fees of **\$119,580** is derived from the following assumptions:

1. The total three year average of annual permits issued for those categories listed in the memorandum above for Fiscal Years 2002 through 2007 is 6,643.
2. DSD estimates that 60% of the average annual permits in these permit categories were for structures built before 1979 or 3,986 applications per year.
3. Estimated annual enforcement cases related to lead-safe work practices (LSWP) under this proposed Ordinance is 780 (15 per week).
4. One third of the estimated 780 annual LSWP enforcement cases will be related to the building permit types reference in this report (260/year).

Cost recovery services related to Section 54.1005, *Lead-Safe Work Practice Standards Required* and 54.1006, *Lead-Safe Work Practice Standards* of the proposed Ordinance, include outreach and enforcement associated with those permits identified in this Report.

In accordance with Administrative Regulation 95.25, the following are the associated personnel and non-personnel costs, and associated cost calculations for the education, outreach and enforcement components of the Ordinance:

PERSONNEL COSTS				
Classification	FTE	Salary	Fringe	Total
LSNP Coordinator	0.10	\$9,321	\$4,167	\$13,488
Senior Combination Inspector	0.40	\$30,588	\$13,677	\$44,265
Asbestos and Lead Program Insp.	2.00	\$131,209	\$62,362	\$193,570
Administrative Aide II	0.30	\$15,206	\$7,997	\$23,203
Word Processor	0.20	\$7,569	\$4,762	\$12,331
Account Clerk	0.30	\$11,363	\$6,778	\$18,141
	3.30	\$205,255	\$99,743	\$304,998
FY08 Overhead Rate (14.3%)				\$29,351
TOTAL PERSONNEL COSTS				\$334,349

NON-PERSONNEL COSTS	
Description	Cost
Office Supplies	\$723
Postage/Mailing	\$2,500
Other Safety Supplies	\$800
Lab Services – Outside	\$2,800
Unclas Professional Services	\$1,600

NON-PERSONNEL COSTS	
Description	Cost
Residential Support	\$2,000
Print Shop Services	\$6,000
Transportation Allowance	\$2,000
Training - In Town	\$1,000
Motive Equip - Usage	\$2,222
Motive Equip - Assignment	\$3,862
EPACs Database Maintenance	\$2,000
Network Access - Committed	\$3,485
Equip/Support - Committed	\$1,540 *
Hardware Lease - Committed	\$544
Telephone Set/Install/Cable Pull	\$144 *
Telephone Service - DP Corp	\$1,392
Equipment Outlay	\$1,100 *
Motive Equipment Outlay	\$2,500
Workstations	\$785 *
TOTAL NON-PERSONNEL COSTS	\$38,997 **
Less One Time Costs* (first year asset acquisition costs which will be recovered from collected fees over the life expectancy of the item.	\$6,069
Plus Amortized Annualized Cost of the asset acquisition	\$797
TOTAL Adjusted NPE	\$33,725

TOTAL PE of \$334,349 plus Adjusted NPE of \$33,725 = \$368,074 Annual Education, Outreach, and Enforcement Costs

Cost Recovery Fee Calculations

Of the 780 annual LSWP enforcement cases, approximately one-third (260 enforcement cases) are assumed to be related to individuals required to obtain one of the permit types listed in this memorandum that could disturb lead-based paint.

$$\$368,074 \div 780 \text{ cases} = \$471/\text{enforcement case}$$

$$260 \text{ cases} \times \$471 = \$122,460$$

As referenced in the assumptions, it is estimated that the number of annual types of permits that could disturb lead-based paint for pre-1979 structures would be 3,986.

$$\$122,460 \div 3,986 = \$30.72/\text{permit} - (\text{rounded down to } \$30/\text{permit}).$$

Estimated revenue to be generated is \$119,580 (3,986 x \$30) for education, outreach and enforcement

DSD processing fee is \$1/permit. **Total fee is \$31.**

In accordance with Administrative Regulation 95.25, the following is the current fee schedule as of January 15, 2008 and the proposed fee schedule for the type of permits associated with the Lead Hazard Prevention and Control Ordinance Report to Council:

Work Item or Service	Unit	Current Fee	Proposed Fee
Carport-Standard	Each	\$311	\$342
Carport-With Calcs	Each	\$533	\$564
Demolition	Each	\$177	\$208
Pre-Demolition Inspection	per hour	\$99	n/a
Partition - Commercial, Interior	up to 50 l.f.	\$367	\$381
Additional partition	each 20 l.f.	\$38	n/a
Partition - Residential, Interior	up to 50 l.f.	\$222	\$253
Additional partition	each 20 l.f.	\$15	n/a
Roof Structure Replacement	up to 300 s.f.	\$222	\$253
Remodel (Residential)	up to 100 s.f.	\$188	\$219
Additional remodel	each 100 s.f.	\$99	n/a
Room Addition (Residential)	up to 100 s.f.	\$289	\$320
Additional room addition	each 100 s.f.	\$166	n/a
Skylight			
Less than 10 s.f.	Each	\$166	\$197
Greater than 10 s.f. or structural	Each	\$289	\$320
Stairs	first flight	\$266	\$297
Each additional flight	per flight	\$111	n/a
Storage Racks			
6' and higher (up to 100 l.f.)	first 100 l.f.	\$712	\$743
Additional racks	each 50 l.f.	\$60	n/a
Stucco and Siding, Stone or Brick Veneer application	up to 400 s.f.	\$233	\$264
Additional application	each 100 s.f.	\$10	n/a
Window/Door (Including Sliding Glass)			
New (non structural)-first unit	Each	\$144	\$175
New (structural shear wall or masonry)	first one	\$489	\$520
Replacement	first one	\$177	\$208
Closing of existing door/window opening	Each	\$255	\$286
Bay Window (structural)	first one	\$656	\$687
Additional door/window	Each	\$88	n/a

Occupancy Type	Project Size Threshold	Construction Categories I FR and II FR			Construction Categories II 1-HR, III 1-HR, and V 1-HR			Construction Categories II N, III N, IV, and V N		
		Base Fee	Proposed Base Fee	*Plus Increment	Base Fee	Proposed Base Fee	*Plus Increment	Base Fee	Proposed Base Fee	*Plus Increment
Office Tenant Improvements	1,000	\$626.00	\$657.00	\$5.23	\$521.50	\$552.50	\$4.36	\$417.50	\$448.50	\$3.46
Office Tenant Improvements	5,000	\$835.00	\$866.00	\$8.36	\$696.00	\$727.00	\$6.96	\$556.00	\$587.00	\$5.58
Office Tenant Improvements	10,000	\$1,253.00	\$1,284.00	\$2.09	\$1,044.00	\$1,075.00	\$1.74	\$835.00	\$866.00	\$1.40
Office Tenant Improvements	20,000	\$1,461.50	\$1,492.50	\$1.39	\$1,217.50	\$1,248.50	\$1.16	\$974.50	\$1,005.50	\$0.93
Office Tenant Improvements	50,000	\$1,879.50	\$1,910.50	\$1.67	\$1,566.00	\$1,597.00	\$1.39	\$1,253.00	\$1,284.00	\$1.11

000516		Construction Categories I FR and II FR			Construction Categories II 1-HR, III 1-HR, and V 1-HR			Construction Categories II N, III N, IV, and V N		
Occupancy Type	Project Size Threshold	Base Fee	Proposed Base Fee	*Plus Increment	Base Fee	Proposed Base Fee	*Plus Increment	Base Fee	Proposed Base Fee	*Plus Increment
Office Tenant Improvements	100,000	\$2,714.50	\$2,745.50	\$1.67	\$2,262.50	\$2,293.50	\$1.39	\$1,810.00	\$1,841.00	\$1.11
Other Tenant Improvements	200	\$324.50	\$355.50	\$40.94	\$270.50	\$301.50	\$34.13	\$216.00	\$247.00	\$27.31
Other Tenant Improvements	1,000	\$652.00	\$683.00	\$7.85	\$543.50	\$574.50	\$6.50	\$434.50	\$465.50	\$5.25
Other Tenant Improvements	2,000	\$730.50	\$761.50	\$4.05	\$608.50	\$639.50	\$3.40	\$487.00	\$518.00	\$2.70
Other Tenant Improvements	4,000	\$811.50	\$842.50	\$8.13	\$676.50	\$707.50	\$6.77	\$541.00	\$572.00	\$5.41
Other Tenant Improvements	10,000	\$1,299.00	\$1,330.00	\$8.94	\$1,082.50	\$1,113.50	\$7.45	\$865.50	\$896.50	\$5.96
Other Tenant Improvements	20,000	\$2,192.50	\$2,223.50	\$8.94	\$1,827.00	\$1,858.00	\$7.45	\$1,461.50	\$1,492.50	\$5.96
Retail Tenant Improvements	1,000	\$742.00	\$773.00	\$18.74	\$618.00	\$649.00	\$15.63	\$494.50	\$525.50	\$12.49
Retail Tenant Improvements	5,000	\$1,491.50	\$1,522.50	\$3.58	\$1,243.00	\$1,274.00	\$2.98	\$994.00	\$1,025.00	\$2.39
Retail Tenant Improvements	10,000	\$1,670.50	\$1,701.50	\$1.86	\$1,392.00	\$1,423.00	\$1.55	\$1,113.50	\$1,144.50	\$1.24
Retail Tenant Improvements	20,000	\$1,856.00	\$1,887.00	\$3.71	\$1,546.50	\$1,577.50	\$3.10	\$1,237.00	\$1,268.00	\$2.48
Retail Tenant Improvements	50,000	\$2,970.00	\$3,001.00	\$4.09	\$2,475.00	\$2,506.00	\$3.40	\$1,979.50	\$2,010.50	\$2.72
Retail Tenant Improvements	100,000	\$5,012.50	\$5,043.50	\$4.09	\$4,177.00	\$4,208.00	\$3.40	\$3,341.50	\$3,372.50	\$2.72

*Per Each Add'l 100 Square Feet or Fraction Thereof

Lead-Safe and Lead-Free Application Processing and Associated Enforcement Cost Recovery Fee

The cost recovery fee of \$40 will provide a total annual projected reimbursement revenue of \$238,520. The fee will be used for services related to Section 54.1010, *Identification and Remediation of Lead Hazards upon Change of Ownership* and will allow for the processing of a lead-safe or lead free application, performing outreach, creating and maintaining an electronic database tracking, performing compliance monitoring between database and transaction records from 3rd party sources, and conducting enforcement activities.

In accordance with Administrative Regulation 95.25, the following are the associated personnel and non-personnel costs:

PERSONNEL COSTS				
Classification	FTE	Salary	Fringe	Total
Community Development Coordinator	0.20	\$18,641	\$8,334	\$26,975
Asbestos & Lead Program Inspector	1.00	\$65,604	\$31,181	\$96,785
Administrative Aide II	1.00	\$50,686	\$26,658	\$77,344
	2.20*	\$134,931	\$66,173	\$201,105
FY08 Overhead Rate (14.3%)				\$19,295
TOTAL PERSONNEL COSTS				\$220,400

* 0.20 FTE is existing position and 2.00 are additional proposed positions in FY 2009

NON-PERSONNEL COSTS	
Description	Cost
Office Supplies	\$271
Postage/Mailing	\$5,000
Other Safety Supplies	\$300
Lab Services – Outside	\$1,050
Unclas Professional Services	\$800
Print Shop Services	\$6,000
Transportation Allowance	\$1,200
Training - In Town	\$600
EPACs Database Maintenance	\$3,000
EPACs/Property data link design	\$15,000 *
Network Access – Committed	\$1,307
Equip/Support – Committed	\$1,012 *
Hardware Lease – Committed	\$204
Telephone Set/Install/Cable Pull	\$99 *
Telephone Service - DP Corp	\$522
Workstations	\$526 *
TOTAL NON-PERSONNEL COSTS	\$36,891 **
Less One Time Costs* (first year asset acquisition costs which will be recovered from collected fees over the life expectancy of the item.	\$16,637
Plus Amortized Annualized Cost of the asset acquisition	\$1,712
TOTAL Adjusted NPE	\$21,966

TOTAL PE of \$220,400 plus Adjusted NPE of \$21,966 = \$242,366

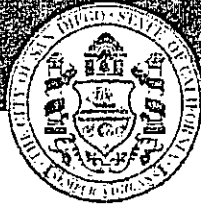
Cost-recovery fee calculations

The annual revenue estimate is \$238,520, and is based on the following assumptions:

- According to the San Diego Association of Realtors, between 2003-2007, the number of pre-1979 attached and detached residential properties sold averaged 7,454 per year.
- Based on a similar City enforcement program for the low-flow toilet program, there is an assumption that after notice letters are mailed to non-complying property owners, and follow-up enforcement, associated application fee will only be collected on 80% of the real estate transactions.

80% of 7,454 annual real estate transactions = 5,963 transactions

$\$242,366 \div 5,963 = \40.64 per application. Fee would be \$40 (rounded down) generating an estimated annual reimbursement revenue of \$238,520



000519

THE CITY OF SAN DIEGO
MANAGER'S REPORT

DATE ISSUED: July 29, 2004

REPORT NO. 04-178

ATTENTION: Land Use & Housing Committee
Agenda of August 4, 2004

SUBJECT: Comprehensive Lead Paint Ordinance

SUMMARY

Issues – 1) Should the City modify Section 54.1001 *et seq.* of the San Diego Municipal Code as recommended by the Lead Poisoning Prevention Citizen's Advisory Taskforce?, 2) Should the City pursue various funding sources for the enforcement of the lead ordinance including: an increased fee on remodeling permits; an increased per unit charge on the rental business fee; and a filing fee for the lead-safe certificate?

Manager's Recommendations - 1) Modify Section 54.1001 *et seq.* of the San Diego Municipal Code as recommended by the Lead Poisoning Prevention Citizen's Advisory Taskforce, 2) Pursue various funding sources for the enforcement of the lead ordinance including: an increased fee on remodeling permits; an increased per unit charge on the rental business fee; and a filing fee for the lead-safe certificate.

Other Recommendation – None

Fiscal Impact – Additional resources will be necessary to fund enforcement of the proposed ordinance. Three possible funding sources have been identified in this Manager's Report.

BACKGROUND

The Centers for Disease Control and Prevention (CDC) has identified lead poisoning as the number one preventable environmental health problem affecting our children. It causes adverse affects on a child's development and later success as an adult. Lead poisoning can cause

permanent damage to a child's nervous system, loss of intelligence quotient (IQ), create learning disabilities, behavioral problems, and at very high levels, coma, convulsions, and death. In lead poisoning cases, the sources may vary but the most common is lead-contaminated dust from chipping and peeling paint, or generated by home improvement projects. Because children under the age of six frequently perform hand-to-mouth behavior, the most common route of exposure is ingestion of lead-contaminated house dust.

According to the 2000 census, approximately 70 percent of the housing units in San Diego were constructed before 1978 (350,000 homes), the first year in which the federal government banned the sale of residential paint containing more than 600 parts per million (ppm) of lead.

According to the County of San Diego, Childhood Lead Poisoning Prevention Program (CLPPP), 299 children age six or younger were identified to have been poisoned by lead in the County of San Diego in 2003. This number is likely not representative of the true impact of this problem as only a small number of children have their blood tested for lead concentrations.

The CDC defines lead poisoning as occurring when a child's blood lead level is 10 micrograms per deciliter ($\mu\text{g/dL}$) or greater. However, recent medical research has determined that the largest decrease in IQ actually takes place at blood lead levels below 10 $\mu\text{g/dL}$ as demonstrated by Figure 1, taken from the *New England Journal of Medicine*, April 2003. Consequently, medical research indicates there could be six to ten times the number of children in the county with blood lead levels sufficiently elevated to cause decreases in IQ but these same children have not reached the CDC's official poisoning threshold of 10 $\mu\text{g/dL}$.

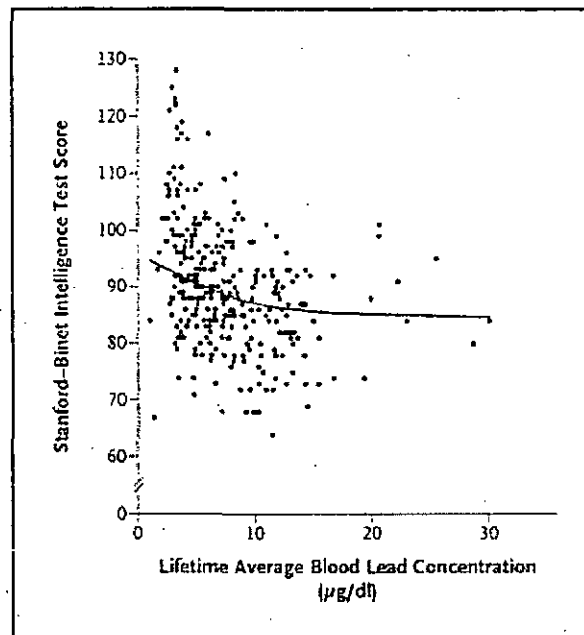


Figure 1

Across the country, all levels of government are actively working together on ways to eliminate lead poisoning by the year 2010. The first line of defense in protecting children from lead poisoning is primary prevention, which means controlling and/or eliminating the source of lead before children are exposed.

Lead-related enforcement in California underwent major changes when Senate Bill 460 became law on January 1, 2003. The major local enforcement components of SB 460 are codified in the California Health & Safety Code 17920.10 and 105255-56 and are as follows:

1. Residential property containing a lead hazard, as defined under state law, is deemed substandard.

2. Contractors disturbing paint on a pre-1979 structure without proper containment are deemed to be creating a lead hazard.
3. Local enforcement agencies are authorized to ensure compliance with this new law.

The City began enforcement of Senate Bill 460 on October 1, 2003. This included training of City Building Inspectors and Land Development Investigators to identify lead hazards during routine inspections so that prevention can be handled in a proactive manner.

DISCUSSION

Lead Safe Neighborhoods Program

In April 2002, the City Council approved an initial lead ordinance and the creation of the Lead Safe Neighborhoods Program (LSNP) to implement primary prevention strategies toward eliminating childhood lead poisoning. One of the strategies included the creation of the Lead Poison Prevention Citizen's Advisory Taskforce (Taskforce) and directed staff, in cooperation with the Taskforce, to develop a more comprehensive lead ordinance.

The overall management of the LSNP is coordinated by the Environmental Services Department (ESD). The other participating City staff include the City Attorney's Office, Council District 6, Council District 8, the Development Services Department (DSD), the Neighborhood Code Compliance Department (NCCD), and the San Diego Housing Commission.

The major strategic areas of the LSNP are as follows (summary of each strategy is in Attachment 1):

- "Clearinghouse" Agency
- Building Partnerships
- Identifying Resources
- Education & Outreach
- Training
- Inspections/Assessments
- Enforcement
- Lead Hazard Reduction Programs
- Early Intervention
- Equipment Loaner Program
- Outreach via City Services

The LSNP's innovative strategies for primary prevention has national recognition and is having an impact on reducing childhood lead poisoning. The City has received more than \$3 million in grants over the past two years.

Lead Poison Prevention Citizen's Advisory Taskforce (Taskforce)

In September 2002, the various stakeholders in the Taskforce began meeting to provide guidance in the development of the LSNP and drafting of a comprehensive lead ordinance. This Taskforce is co-chaired by Councilmembers Donna Frye and Ralph Inzunza. The past and current Taskforce members include:

Association of General Contractors -- *Brad Barnum*
 City Heights Development Corporation -- *Jay Powell*
 Education Enrichment Systems, Inc. -- *Robin Layton*
 Environmental Health Coalition -- *Leticia Ayala*
 Family Health Clinics of San Diego -- *Janet Adamain*
 Linda Vista Planning Community Group -- *Ed Cramer*
 San Diego Association of Realtors -- *Courtney Comer*
 San Diego County Apartment Association -- *Bob Grinchuk*
 University of California San Diego, School of Medicine -- *Ruth Heifetz, M.D.*
 University of California San Diego, Western Region Lead Training Institute -- *Lisa McKay*
 YMCA Childcare Resource Service -- *Deborah Boles*

The Taskforce formed two subcommittees. The Education and Outreach subcommittee was responsible for developing educational materials that are culturally sensitive, and identifying the various outreach vehicles and how best to utilize them. The Ordinance subcommittee was responsible for drafting a comprehensive lead ordinance, and prioritizing/leveraging resources for the high risk communities.

Ordinance Development Process

The Ordinance Subcommittee began the development process by reviewing lead-related ordinances from around the country including the State of New Jersey, State of Indiana, New York City, City of New Orleans, City of Chicago, City/County of San Francisco, and City of Long Beach. The goal was to identify the best components of various model ordinances and couple them with additional ideas generated by the subcommittee. The outcome of this consensus driven process became the outline of the City's lead ordinance.

The subcommittee members spent considerable hours discussing language, and for the most part, were able to arrive at consensus on most issues. A concerted effort was made to include only elements that were enforceable. Elements that were considered procedural or educational in nature will be incorporated into the City's policy and procedures.

There are two outstanding issues where consensus among all stakeholders was not achieved. One is the requirement that a certified lead inspection and lead hazard remediation must occur before or after the sale of any pre-1978 dwelling units. The other is requiring all pre-1978 property to have a lead risk assessment and remediation of lead hazards by December 31, 2010. Staff research identifies that San Diego would be the first jurisdiction in the country to implement a universal inspection requirement on all pre-1978 dwelling units.

Ordinance Overview

The attached draft ordinance would amend Sections 54.1001-54.1006 and add Sections 54.1007-54.1017 to the San Diego Municipal Code (Attachment 2). The following is an overview of the proposed ordinance:

1. **54.1001:** Declares a lead hazard, as defined in 54.1003, to be a public nuisance.
2. **54.1002:** Declares the overall purpose of the ordinance to include the prevention, identification, and remediation of lead hazards so as to protect persons, in particular children, from exposure to lead hazards.
3. **54.1003:** Provides definitions for the ordinance including key terms such as lead hazard and lead-based paint. Remediating a lead hazard is not removing all lead-based paint.
4. **54.1004:** Makes it unlawful to create or maintain a lead hazard and unlawful to fail to eliminate or reduce a lead hazard.
5. **54.1005-06:** Requires the use of lead safe work practices by renovators disturbing paint on dwelling units built before January 1, 1979, or if sampling is performed and the lead quantity is greater than 1,000 ppm or $0.5 \mu\text{g}/\text{cm}^2$. This Section defines the minimum lead safe work practices, and establishes conditions for requiring dust clearance sampling. It also provides for the relocation of occupants if work cannot be done safely when they are present.
6. **54.1007(a), (b):** Establishes a rebuttable presumption that paint in or on dwelling units constructed prior to January 1, 1979, is lead-based paint, unless the dwelling unit has been proven to contain no lead-based paint or the lead-based paint has been removed.
7. **54.1007(c):** Imposes a duty on owners of dwelling units constructed prior to January 1, 1979, to perform a lead risk assessment on the dwelling unit by the following dates:
 - By December 31, 2008, for all dwelling units with 16 or more units.
 - By December 31, 2009, for all dwelling units with 5 to 15 units.
 - By December 31, 2010, for all other dwelling units.
8. **54.1007(c):** Imposes a duty on owners of dwelling units constructed prior to January 1, 1979, to correct identified lead hazards and complete a clearance inspection within 30 days, with limited exceptions, after notice of the existence of a lead hazard.
9. **54.1007(d),(e),(f):** Provides for administrative, summary, and judicial abatement of lead hazards.
10. **54.1008:** Establishes responsibility for residential tenant relocation and the associated costs in the event of an abatement action to remediate a lead hazard in a dwelling unit.

11. **54.1009:** Requires owners of rental dwelling units built before January 1, 1979, to conduct visual inspections prior to re-occupancy of vacated units.
12. **54.1010:** Requires identification and remediation of lead hazards in connection with a change of ownership (with certain exceptions) of a dwelling unit constructed prior to January 1, 1978, unless the dwelling unit is exempted; provides a mechanism for a buyer and seller to agree to transfer responsibility to the buyer for performance of the lead risk assessment and remediation of identified lead hazards.
13. **54.1011:** Requires home improvement stores that sell paint supplies and/or rent high-pressure water equipment to prominently display lead educational materials provided by the City.
14. **54.1012:** Requires Child Care Facilities to have parents or legal guardians of children, aged six months to six years, provide a note from a physician or other healthcare provider indicating that the child has been appropriately screened for lead poisoning, unless the parent objects on religious grounds.
15. **54.1013:** Provides enforcement authority to the Director or to their designee. ESD will have the primary responsibility for enforcement of this ordinance and will work in coordination with NCCD.

Cost of Ordinance Requirements to Property Owner/Responsible Party

Lead Risk Assessment - The cost of a lead risk assessment by a state certified lead inspector/assessor as defined in the proposed ordinance will vary by the number of units inspected at one time. It is estimated that the ranges of costs are:

Apartment/Condo Unit: **\$150 - \$300**

Single-Family Detached Home: **\$300 - \$500**

Lead Hazard Remediation - Lead hazard remediation, as required by the proposed ordinance, is for the removal of the lead hazard only (referred to as interim controls) and does not include complete removal of all lead-based paint. Based on a national survey conducted by the Department of Housing and Urban Development (HUD) in 2001, 25% of homes that were inspected have lead hazards. Lead hazard remediation will vary greatly and can range from \$50 for a simple paint coating repair to \$20,000 if the paint on the dwelling unit is in significant disrepair. These costs will vary by number of units remediated at one time and does not include relocation if it is required. The estimated ranges of costs are:

Apartment/Condo Unit: **\$750 - \$1,000**

Single-Family Detached Home: **\$1,500 - \$2,000**

Lead Safe Work Practices - Lead Safe Work Practices, as proposed in this ordinance, would not add any significant costs to a project unless a dust clearance is required. Estimated ranges of costs for one room of a structure when a dust clearance is required are:

Apartment/Condo Unit: **\$150 - \$200**
 Single-Family Detached Home: **\$150 - \$200**

Funding

The enforcement of this ordinance cannot be fully implemented with current staffing levels and will require additional revenue sources. Three new possible funding sources have been identified to implement enforcement of this ordinance:

1. An increase to the fee for all remodeling permits to fund lead safe work practice enforcement as defined under proposed Sections 54.1005-1006.
2. An increase to the per unit charge on the rental business fee to fund the enforcement of lead hazards creating substandard housing as defined in proposed Section 54.1007. The City Treasurer's current billing software program cannot accommodate this additional fee increase. It may be up to two years until the software is in place to collect the fee increase. Staff is researching the feasibility of the County collecting this revenue as an interim solution.
3. A new cost-recovery fee for filing of a lead-safe certificate for all properties defined in proposed Section 54.1007 required to have a lead risk assessment, and for all properties that have a sales transaction as defined in proposed Section 54.1010.

Until the final ordinance is adopted, it is difficult to accurately calculate the amount needed to fund enforcement activities. However, the anticipated range of fees are estimated to be: \$5 - \$6 increase in the remodeling permit fee, \$2 - \$3 increase for the rental business fee, and \$20 - \$25 new fee for filing the lead-safe certificate. One-time partial funding sources for start-up phase in FY 05 have been identified with Community Development Block Grant Funding provided by Council Districts 1, 3, & 6, and from the NCCD's Civil Penalties Code Enforcement Fund. Once the enforcement program is fully implemented, an initial estimate of the annual cost should be in the \$800,000 - \$850,000 range.

Other revenue sources will come from active enforcement of this ordinance that will generate fines and penalties for those in non-compliance. The LSNP will also continue its pursuit of grant funding.

Potential Concerns

The adoption of this ordinance will produce significant benefits towards providing lead-safe housing. There are concerns that could arise in working towards the elimination of lead hazards.

- A lead hazard corrected with interim controls could return.
 - ✓ *There are benefits to eliminating the lead hazards one time and educating residents about the significant impact a lead hazard can have on the health of their children.*
- Requiring lead inspections and remediation of lead hazards at the point of sale could add time to the transaction.

- ✓ *This will ensure that lead hazards will be identified and corrected before a child becomes poisoned. It will add to the current requirements for disclosure warnings in the escrow paperwork.*
- The cost of requiring lead risk assessments and remediation of lead hazards could impact low-income families.
 - ✓ *The City is committed to working to achieve voluntary compliance and will continue the pursuit of grants and other funding options to minimize these costs to low-income families. The City will build on its successful HUD lead hazard remediation grants for the low-income. There will be exceptions under various circumstances for low-income property owners to ensure housing is safe and remains affordable.*
- It is understood that this proposed ordinance primarily addresses environmental lead hazards stemming from lead paint and that there are other sources of childhood lead poisoning.
 - ✓ *The City will continue its lead education and outreach program on all lead poisoning sources as well as work with other agencies and organizations that can help eliminate sources.*
- The current capacity of state certified lead inspectors/assessors is not adequate to ensure compliance with the ordinance.
 - ✓ *The City is committed to developing this necessary capacity and will initiate grace periods until local market forces can adjust to meet the demand.*

CONCLUSION

Nationwide and throughout California, local agencies have been adopting lead-related ordinances and using enforcement as one means of eliminating lead poisoning. This ordinance is comprehensive and will have impacts on property owners. However, by accepting the Taskforce's recommendations, the City will be taking an important step forward to help eliminate lead hazards in our children's homes.

ALTERNATIVES

1. Eliminate and/or modify specific Section(s) of the ordinance and adopt the modified ordinance.
2. Modify or select different funding options for enforcement.
3. Do not adopt the ordinance.

000527

Respectfully submitted,

Elmer L. Heap, Jr.
Environmental Services Director

Marcia K. Samuels
Neighborhood Code Compliance Director

Approved: Richard G. Mendes
Deputy City Manager

HEAP/SAMUELS/AJJ

Note: The attachments are not available in electronic format. A copy is available for review in the Office of the City Clerk.

Attachments: 1. Summary of the LSNP strategic components
2. Proposed San Diego Municipal Code Section 54.1001 *et seq.*

RECEIVED
07 OCT 11 PM 12:13
CITY CLERK'S OFFICE
SAN DIEGO, CA



000528

THE LEAD SAFE NEIGHBORHOODS PROGRAM STRATEGIC AREAS

1. **"Clearinghouse" Agency:** Serve in the capacity of a "clearinghouse" agency to connect all available resources for lead poisoning prevention to the community. Many of the lead related programs run by various agencies in San Diego have specific eligibility criteria such as location and/or income levels. LSNP's goal is to help any resident of San Diego with lead hazard concerns. LSNP will ensure various options for lead-related safety programs exist for all residents, independent of the eligibility criteria.
2. **Building Partnerships:** Provide leadership and staffing role to the San Diego Regional Lead Working Group that networks all organizations in San Diego working to prevent Lead Poisoning and to the Lead Poison Prevention Citizen's Advisory Taskforce which provides direction to LSNP and is in the process of developing a comprehensive lead-related ordinance. LSNP will continue to foster partnerships with other agencies, community-based organizations, and faith-based organizations to achieve its mission of eliminating lead poisoning.
3. **Identifying Resources:** Continue to be creative in developing and identifying resources to accomplish the mission of eliminating lead poisoning. Received over \$3 million in grants for the past two years.
4. **Education & Outreach:** LSNP received a \$478,000 grant from HUD in FY 2004 to provide lead hazard awareness education and outreach. LSNP will conduct lead hazard awareness education and outreach for the entire City via media campaigns, information hotline, and website. LSNP will focus additional concentrated education and outreach efforts to high risk areas for lead poisoning in District 3, 4, 6, 7, and 8.
5. **Training:** Provide free or low-cost training on lead hazards to outreach workers, property managers, landlords, and the construction industry. In 2004, additional lead-related training will be added for childcare providers and residents.
6. **Inspections/Assessments:** Provide free lead hazard inspections and assessments to low-income residents in high risk areas of San Diego and to any family that has a child with blood lead level of 5 ug/dL or higher who is not eligible for the County's Childhood Lead Poison Prevention Program (CLPPP).
7. **Enforcement:** As of October 1, 2003, perform enforcement of lead hazards that cause substandard housing or for lead hazards generated by improper work practices disturbing lead-based paint. Enforcement is a partnership between the Environmental Services Department, Neighborhood Code Compliance, and Development Services Department. Per grant provided by State of California, LSNP will develop its role as the San Diego County Regional Lead Enforcement Coordinator.
8. **Lead Hazard Reduction Programs:** In 2004, LSNP will implement an alternative lead hazard reduction program for residents that may not qualify for the Housing and Urban Development (HUD) Lead Hazard Reduction Program (LHRP). The San Diego Housing Commission manages the HUD LHRP.
9. **Early Intervention:** Provide environmental investigative services in partnership with County CLPPP Early Intervention Program when a child has been poisoned with a blood lead level between 9.5 - 14.5 ug/dL.
10. **Equipment Loaner Program:** Provide a free loaner program for equipment and tools used in the control of lead hazards in the home.
11. **Outreach via City Services:** Continue to implement ways for the City to deliver lead-related messages to the public during our daily service interactions. Current implementation examples are attaching lead-related information to all building construction permits and having the housing enforcement department include lead information during their enforcement activities.

DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO

DATE:

EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION

February 12, 2008

SUBJECT: Lead Hazard Prevention and Control Ordinance recommended by Land Use and Housing Committee

GENERAL CONTRACT INFORMATION

Recommended Contractor: N/A

Amount of this Action: N/A

Funding Source: N/A

SUBCONTRACTOR PARTICIPATION

No subcontractor participation for this action.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

There is no contractor for this action.

ADDITIONAL COMMENTS

This action is to request a Lead Hazard Prevention and Control Ordinance and to establish a cost recovery regulatory fee.

by MM-J

000531

7-330
03/11

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO						1. CERTIFICATE NUMBER (FOR AUDITOR'S USE ONLY)	
TO: CITY ATTORNEY		2. FROM (ORIGINATING DEPARTMENT): Council President Peters & Councilmember Frye				3. DATE: February 7, 2008	
4. SUBJECT: Lead Hazard Prevention and Control Ordinance recommended by Land Use and Housing Committee							
5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.) Chris Cameron (66981/10A)			6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.) Mary Ann Kempczenski (65996/10A)			7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED <input checked="" type="checkbox"/>	
8. COMPLETE FOR ACCOUNTING PURPOSES							
FUND					9. ADDITIONAL INFORMATION / ESTIMATED COST:		
DEPT.							
ORGANIZATION							
OBJECT ACCOUNT							
JOB ORDER							
C.I.P. NUMBER							
AMOUNT							
10. ROUTING AND APPROVALS							
ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	COUNCIL PRES.			8			
2	CM FRYE		2/7/08	9			
3	FINANCIAL MGMT		2/5/08	10	CITY ATTORNEY		2/7/08
4	EOC			11	ORIG. DEPT		2/8/08
5	DSD/EAS			DOCKET COORD:			
6	COMPTROLLER			✓	COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION		
7	CFO				COUNCIL DATE: 3/11/08		
11. PREPARATION OF: <input checked="" type="checkbox"/> RESOLUTIONS <input checked="" type="checkbox"/> ORDINANCE(S) <input type="checkbox"/> AGREEMENT(S) <input type="checkbox"/> DEED(S)							
1) Amending Abatement of Lead Hazards, sections 54.1001 et seq. of the San Diego Municipal Code as recommended by the Land Use and Housing Committee by replacing it with the Lead Hazard Prevention and Control Ordinance ("Ordinance"), attachment B hereto, Ordinance Version A.							
(Continued on attachment "A").							
11A. RECOMMENDATION: Approve the Recommendation							
12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)							
COUNCIL DISTRICT(S): ALL							
COMMUNITY AREA(S): ALL							
ENVIRONMENTAL IMPACT: THIS ACTIVITY IS NOT A "PROJECT" AND THEREFORE NOT SUBJECT TO CEQA PER CEQA GUIDELINES SECTION 15060 (C) (2). THE PROPOSED FEES ARE OPERATING EXPENSES AND THEREFORE STATUTORILY EXEMPT FROM CEQA PURSUANT TO SECTION 15273(A)(1).							
HOUSING IMPACT: IMPROVE THE QUALITY OF AFFORDABLE HOUSING STOCK							
OTHER ISSUES:							

Attachment "A" (Box 11 continued)

- 2) Amending *Judicial Remedies*, Section 12.0204 of the San Diego Municipal Code to clarify that maintaining or allowing the existence of a public nuisance is a violation of the San Diego Municipal Code, Attachment C hereto.
- 3) Establish a cost recovery, regulatory fee of \$31 to be added to the permit fee for specific permits identified in Report to Council No. 08-029 date March 5, 2008, effective beginning 60 days after the effective date of the Ordinance, for lead enforcement in connection with proposed Section 54.1005, Lead Safe Work Practices Standards Required and Section 54.1006, Lead Safe Work Practice Standards and directing the City Clerk to amend the Ratebook of City Fees and Charges.
- 4) Find that the cost recovery, regulatory fee of \$31 is established for the purpose of meeting operational expenses associated with education, outreach and enforcement in connection with the Ordinance.
- 6) Establish a cost recovery, application filing fee of \$40 for a lead-safe or lead-free certificate in connection with section 54.1010, effective beginning 180 days after the effective date of Ordinance and directing the City Clerk to amend the Ratebook of City Fees and Charges to reflect the new fee.
- 7) Find that the cost recovery, application filing fee of \$40 is established for the purpose of meeting operational expenses associated issuance of lead-safe or lead-free certificates, education, outreach, and enforcement in connection with the Ordinance.
- 8) Receive the City Manager Report No. 04-178, dated July 29, 2004 Comprehensive Lead Paint Ordinance (Attachment D) and associated fee cost calculations and proposed fee schedule memorandum from Jay Goldstone dated January 23, 2008 (Attachment E).

Attachments:

- A: Box 11, cont'd
- B: Ordinance Version A, with strikeout and digest
- C: San Diego Municipal Code – Judicial Remedies, with strikeout and digest
- D: Land Use & Housing materials
- E: Memorandum from COO Jay Goldstone, dated 1/23/08

(O-2008-90)

CITY ATTORNEY DIGEST

ORDINANCE NUMBER O-_____ (New Series)

DATE OF FINAL PASSAGE _____

EFFECTIVE DATE _____

AN ORDINANCE OF THE CITY OF SAN DIEGO AMENDING CHAPTER 5, ARTICLE 4, DIVISION 10 OF THE SAN DIEGO MUNICIPAL CODE BY RENAMING DIVISION 10; BY AMENDING SECTIONS 54.1001, 54.1002, 54.1003, 54.1004, 54.1005, AND 54.1006; AND BY ADDING SECTIONS 54.1007, 54.1008, 54.1009, 54.1010, 54.1011, 54.1012, 54.1013, 54.1014, 54.1015, AND 54.1016; ALL RELATING TO LEAD HAZARD PREVENTION AND CONTROL; AND FINDING AS TO ENVIRONMENTAL IMPACT.

This ordinance expands upon the current regulations in the Municipal Code pertaining to the prevention and abatement of lead hazards. The overall goal of the proposed lead ordinance is to eventually eliminate lead hazards (due mainly to lead-based paint) in various structures including, but not limited to, housing. The ordinance attempts to further this goal by doing the following: (1) declaring lead hazards a public nuisance; (2) making it unlawful to create or maintain a lead hazard; (3) requiring the use of lead safe work practices while engaging in activities which could disturb lead-based paint; (4) establishing a rebuttable presumption that paint on housing constructed prior to 1979 is lead-based paint; (5) imposing a duty on owners of housing to correct identified lead hazards after notice of the hazard; (6) providing for occupant relocation during lead hazard remediation; (7) requiring a visual inspection for and correction of deteriorated paint in rental housing, constructed prior to 1979, prior to re-occupancy; (8) requiring a lead risk assessment and remediation of lead hazards upon a change of ownership (with certain exceptions) of housing constructed prior to 1978; (9) imposing a duty on

home improvement stores to maintain pamphlets and post a warning sign regarding the dangers of lead hazards when disturbing paint on housing constructed prior to 1979; (10) requiring child care centers to require parents to provide a doctor's note that the child has been screened for lead poisoning, unless the parent has a religious objection to the screening; and (11) providing for enforcement of the ordinance provisions and cost recovery.

This ordinance contains a notice that a full reading of this ordinance is dispensed with prior to passage, since a written copy was made available to the City Council and the public prior to the day of its passage.

This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

A complete copy of this ordinance is available for inspection in the Office of the City Clerk, City of San Diego, 2nd Floor, City Administration Building, 202 C Street, San Diego, CA 92101.

GCL:mb
02/27/08
Or.Dept: ESD
D-2008-90

(O-2008-90)

ORDINANCE NUMBER O-_____ (New Series)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE CITY OF SAN DIEGO AMENDING CHAPTER 5, ARTICLE 4, DIVISION 10 OF THE SAN DIEGO MUNICIPAL CODE BY RENAMING DIVISION 10; BY AMENDING SECTIONS 54.1001, 54.1002, 54.1003, 54.1004, 54.1005, AND 54.1006; AND BY ADDING SECTIONS 54.1007, 54.1008, 54.1009, 54.1010, 54.1011, 54.1012, 54.1013, 54.1014, 54.1015, AND 54.1016; ALL RELATING TO LEAD HAZARD PREVENTION AND CONTROL; AND FINDING AS TO ENVIRONMENTAL IMPACT.

WHEREAS, the Centers for Disease Control and Prevention estimates that more than 434,000 preschoolers are affected by lead poisoning in the United States, and that lead poisoning is one of the most common, preventable pediatric health problems in this country; and

WHEREAS, lead is most harmful to young children because lead is absorbed into their growing bodies, interfering with the developing brain and other organs and systems such as the nervous system and kidneys. Lead poisoning has been linked to reduced IQ, attention deficit disorder, hearing loss, impaired growth, reading and learning disabilities, and other health, behavioral, and intellectual consequences; and

WHEREAS, while lead poisoning crosses socioeconomic, geographic, and racial boundaries, lead poisoning predominantly affects children from low-income families living in older, poorly maintained housing; and

WHEREAS, the Council of the City of San Diego takes legislative notice of the contents of the City Manager's Report regarding the Lead-Safe Neighborhoods Program (CMR-04-178) and its accompanying oral and documentary evidence as presented before the Land Use and Housing Committee on August 4, 2004; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter 5, Article 4, Division 10, of the San Diego Municipal Code is hereby amended by renaming Division 10 "Lead Hazard Prevention and Control Ordinance," by amending Sections 54.1001, 54.1002, 54.1003, 54.1004, 54.1005, and 54.1006, and by adding Sections 54.1007, 54.1008, 54.1009, 54.1010, 54.1011, 54.1012, 54.1013, 54.1014, 54.1015, and 54.1016, to read as follows:

Division 10

Lead Hazard Prevention and Control Ordinance

§ 54.1001 Findings

The Council of the City of San Diego finds and declares that:

- (a) **Problem:** In the City of San Diego, between 1992 and 2003, there were 781 reported cases of childhood *lead* poisoning (greater than 15 µg/dL) and almost 300 children in 2003 with blood *lead* levels greater than 10 µg/dL in San Diego County. These figures are not considered a true representation of the problem, as only a small percentage of children are tested (state average is 20%). The Centers for Disease Control and Prevention has declared that the most effective approach to *lead* poisoning is prevention by eliminating *lead hazards* from children's environment.
- (b) **Health Effects:** *Lead* is most harmful to young children because it interferes with the development of the brain, as well as other organs and systems such as the kidneys and nervous system. *Lead* poisoning has been linked to reduced IQ, attention deficit disorder, hearing loss, impaired growth, and reading and learning disabilities. Recent research has revealed that even low levels of *lead*

exposure can cause a permanent decrease in a *child's* IQ. In adults, high *lead* levels can cause high blood pressure, headaches, digestive problems, memory and concentration problems, kidney damage, mood changes, nerve disorders, sleep disturbances, and muscle or joint pain.

- (c) Housing Stock: *Lead-based paint*, and associated *lead-contaminated dust* and *lead-contaminated soil*, is the number one source of *lead* poisoning. According to the 2000 United States census, approximately sixty-six percent (310,000) of the housing units in the City of San Diego were built before 1979, and approximately twenty-eight percent (135,000) of the City of San Diego's housing stock was constructed before 1960.
- (d) Prevention is Key: Childhood *lead* poisoning is preventable. There is no medical treatment to reverse the effects of *lead* poisoning. Household *lead hazards* can be permanently eliminated by abatement or controlled through proper maintenance and *lead-safe* work practices.
- (e) Lead Paint Ban: The Consumer Product Safety Commission banned the use of *lead* in concentrations greater than 600 parts per million in residential paint after February 27, 1978. For this reason, *paint* applied to a *dwelling unit* or *structure* prior to January 1, 1979, is presumed to contain *lead* unless *lead-based paint testing* proves it is below thresholds defined in Division 10. All *paint* applied to a *steel structure* is presumed to contain *lead* unless *lead-based paint testing* proves it is below thresholds defined in Division 10.

- (f) Lead Hazard: A *lead hazard* found on any *property, premises, dwelling unit, structure, or steel structure* within the City of San Diego is a *public nuisance*.
- (g) Lead Safe Work Practices: Dust generated in disturbance of *lead paint* during renovation and repair is a principal source of *lead* dust exposure to our children and community. Unless the dust is contained, it permeates the carpet, ductwork, and soil, so that children and adults may breathe or ingest the dust for months and years to come.
- (h) Authority: The implementation of Division 10 and the associated enforcement will assist in reducing the presence of *lead hazards* and, thereby, help the City of San Diego in achieving its goal of eliminating childhood *lead* poisoning. On January 1, 2003, California implemented Senate Bill 460, which modified California Civil Code section 1941.1 and California Health and Safety Code sections 17920.10, 17980, 105255, and 105256 that state that the existence of *lead hazards* in housing can constitute a violation of State Housing Law and make it illegal for maintenance or construction activities to generate *lead hazards*. Amended Health and Safety Code sections 17961, 17980, 105255, and 105256 provide local jurisdictions with specific authority to correct and prevent *lead hazards*. Division 10 establishes the City of San Diego's enforcement mechanism for purposes of Senate Bill 460 and also provides additional regulation and enforcement tools which will help reduce the exposure of children and others to *lead hazards*.

- (i) Tenant Protection: The Council acknowledges that California Civil Code section 1942.5 prohibits certain acts of retaliation by a landlord against a tenant because of the tenant's complaint to an appropriate agency regarding a residential unit which contains *lead hazards*.
- (j) Necessary Service: The performance of a *lead risk assessment* in the interior and on the *exterior* of a *dwelling unit* constructed prior to January 1, 1979, as well as the common areas of the *dwelling unit*, is a necessary service and/or repair to protect the health, safety, and welfare of the occupants of the *dwelling unit* and the public.

§ 54.1002 Purpose

The purpose of Division 10 is:

- (a) to prevent, identify, and remedy *lead hazards* in housing before children are poisoned;
- (b) to protect occupants and the public from exposures to *lead hazards*;
- (c) to provide standards to implement *lead hazard* control requirements;
- (d) to strengthen the authority of local agencies responding to *lead paint* poisoning cases; and
- (e) to establish and promote *lead-safe* work practice standards for *owners*, maintenance workers, and all *persons* involved in *lead hazard* control and activities such as remodeling, *renovation*, rehabilitation, and repair that disturb *lead paint*, in order to protect occupants and the public from exposure to *lead hazards*.

§ 54.1003 Definitions

All defined terms in Division 10 appear in *italics*, except for the terms Building Permit and Demolition/Removal Permit which refer to those terms respectively as used in the Land Development Code and which, consistent with the Land Development Code, are not italicized in this Division. For purposes of Division 10, the following terms have the following meanings:

Accredited laboratory means a laboratory which is accredited through the United States Environmental Protection Agency National Lead Laboratory Accreditation Program.

Adjacent properties means *properties* that abut the *property* at which activities which *disturb or remove paint* have been, are being, or will be performed.

Certified means a process used by the State of California Department of Health Services and the United States Environmental Protection Agency to identify individuals who have completed training and other requirements to permit the proper and safe execution of *lead risk assessments* and *lead inspections*, *lead dust clearance sampling*, or *lead hazard* reduction and control work.

Change of ownership means a transfer, sale, or exchange of the fee interest in any *property*.

Child means any person less than six years of age.

Child-care facility means a facility that provides nonmedical care for children less than 18 years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the

individual on less than a 24-hour basis. This includes day care centers and employer-sponsored child care centers.

Clearance inspection means an onsite limited investigation, performed by a *certified lead* inspector/assessor or a *certified lead* project monitor, of single surface dust sampling or soil sampling a minimum of one hour after completion of final cleanup activities to determine whether dust or soil *lead* levels are below thresholds defined in Division 10. The methodology for conducting the sampling shall follow procedures as defined in 40 Code of Federal Regulations part 745.227, as it may be amended from time to time.

Containment barriers means a system, process, or barrier, on the interior or exterior of a *dwelling unit*, *structure*, or *steel structure*, designed to ensure that *lead-contaminated dust*, *lead-contaminated soil*, or *lead paint contaminants* are not spread, blown, or tracked from inside to outside of a work site, which system, process, or barrier is at least as effective as those contained within the *HUD Guidelines*, or, for *steel structures*, at least as effective as those contained in the most recent edition of the Lead Paint Removal Guide published by the Steel Structures Painting Council.

De minimis levels means an area less than: (1) two square feet in any one interior room or space of a *dwelling unit* or *structure*; or (2) twenty square feet on an *exterior* surface; or (3) ten percent of the surface area on any component part, either interior room or space or *exterior*, with a small surface area such as a window sill, baseboard, or trim.

Department means the City Environmental Services Department and/or the Neighborhood Code Compliance Department.

Deteriorated paint means *paint* that is cracking, flaking, chipping, peeling, or otherwise separating from the substrate of the *dwelling unit* or any component thereof.

DPH means the California Department of Public Health.

Director has the same meaning as set forth in section 11.0210 of this Code.

Disturb or remove paint means any action that creates friction, pressure, heat, or a chemical reaction upon any *paint* on an interior or *exterior* surface so as to abrade, loosen, penetrate, chip, cut through, remove, or eliminate *paint* from that surface. This term shall include all *lead hazard* correction activities, all demolition activities, and all surface preparation activities performed upon an interior or *exterior* surface containing *paint*.

Dwelling unit has the same meaning as set forth in section 113.0103 of this Code and also includes *multiple dwelling unit* and *single dwelling unit* as those terms are defined in section 113.0103 of this Code.

Enforcement official has the same meaning as set forth in section 11.0210 of this Code.

Exterior means the outside of a *dwelling unit*, *structure*, or *steel structure* and the areas around it within the boundaries of the *property*, including the *exterior* of any detached *structure*, and including, but not limited to, freestanding and common walls, stairways, fences, light wells, breezeways, sheds, garages, patio covers, decks, and any similar *structures*.

HEPA means a High Efficiency Particulate Air Filter.

Home improvement store means all retail stores which sell home improvement products including, but not limited to, *paint* and *paint* removal products, construction and building materials, and tools and hardware.

HUD Guidelines means the most recent version of the United States Department of Housing and Urban Development "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing."

Imminent lead hazard means a *lead hazard* which creates a present and immediate danger to life, *property*, health, or public safety.

Landlord means an *owner*, lessor, or sublessor who receives or is entitled to receive rent for the use or occupancy of any commercial or residential rental *property* in the City of San Diego, and the agent, representative, or successor of any of the foregoing.

Lead means metallic lead and all inorganic and organic compounds of lead.

Lead-based paint or *lead paint* means *paint* or other surface coatings that contain an amount of *lead* equal to, or in excess of, one milligram per square centimeter (1.0 mg/cm^2) or one-half of one percent (0.5%) by weight.

Lead-based paint testing means: (1) testing of surfaces to determine the presence of *lead-based paint* performed by an independent *Certified Lead Risk Assessor/Inspector*, in accordance with the *HUD Guidelines*, and which testing includes bulk *paint* samples analyzed by an *accredited laboratory*; or (2) testing by an *XRF*.

Lead-contaminated dust means dust that contains an amount of *lead* equal to, or in excess of, forty micrograms per square foot ($40 \mu\text{g}/\text{ft}^2$) for interior floor surfaces, two hundred and fifty micrograms per square foot ($250 \mu\text{g}/\text{ft}^2$) for interior horizontal window surfaces, and four hundred micrograms per square foot ($400 \mu\text{g}/\text{ft}^2$) for *exterior* floor and *exterior* horizontal window surfaces.

Lead-contaminated soil means bare soil that contains an amount of *lead* equal to, or in excess of, four hundred parts per million (400 ppm) in childrens' play areas and one thousand parts per million (1000 ppm) in all other areas.

Lead dust testing means tests conducted in accordance with the most recent federal guidelines to determine the presence or absence of *lead-contaminated dust* within a defined area.

Lead-free certificate means a written certification by a *Certified Lead Inspector/Assessor* that a *lead inspection* has been conducted and neither *lead paint* nor *lead hazards* are present in the interior or the *exterior* of a *dwelling unit*.

Lead hazard means: (1) the existence of *deteriorated paint* over a surface area larger than *de minimis levels* in the interior or *exterior* of a *dwelling unit* or *structure* constructed prior to January 1, 1979; or (2) the existence of *deteriorated paint*, in the interior or *exterior* of a *dwelling unit* or *structure* constructed prior to January 1, 1979, over a surface area smaller than *de minimis levels* but which, as determined by an *enforcement official*, is likely to endanger the health of the public or the occupants of the *dwelling unit* or *structure*; or (3) the disturbance of *lead-based paint* or *presumed lead-based paint* without *containment barriers*; or (4) the creation or maintenance of any other condition which may result in

persistent and quantifiable *lead* exposure; or (5) the presence of *lead-contaminated dust* or *lead-contaminated soil*.

Lead inspection means a surface by surface investigation to determine the presence of *lead paint*, as described in Chapter 7: Lead-Based Paint Inspection, *HUD Guidelines*, as they may be amended from time to time, conducted by a *Certified Lead Inspector/Assessor*.

Lead paint contaminants means substances containing *lead paint* or *presumed lead-based paint* which are potentially hazardous to human health or the environment including, but not limited to, *paint* chips and *paint*-containing soil, debris, dust, abrasives, fumes, or water.

Lead risk assessment means an on-site investigation by a *Certified Lead Inspector/Assessor* to determine the existence, nature, severity, and location of *lead hazards* and the preparation of a written report describing the results of the investigation and options for eliminating *lead hazards*.

Lead-safe certificate means a written certification, by a transferor or transferee of a *dwelling unit* constructed prior to January 1, 1979, that a *Certified Lead Inspector/Assessor* has performed a *lead risk assessment* on the *dwelling unit* and that all *lead hazards* have been corrected in accordance with Division 10.

Lead soil testing means tests conducted in accordance with the most recent federal guidelines to determine the presence or absence of *lead-contaminated soil* within a defined area.

Occupants means tenants or other *persons* legally authorized to occupy or partially occupy the *property*.

Owner means the *person* or *persons* owning *property* or any improvements thereon in the City of San Diego and includes such *person's* legally authorized agent or representative and any successors in interest.

Paint means any paint, varnish, shellac, or other similar coating.

Person means any natural person, municipal, county, or state agency to the extent allowable by law, firm, joint venture, joint stock company, business concern, trust, organization, club, association, partnership, company, or corporation, or the officers, agents, employees, managers, representatives, heirs, executors, administrators, successors, or assigns of any of them or any other entity which is recognized by law as the subject of rights and duties.

Premises has the same meaning as set forth in section 54.0202 of this Code.

Presumed lead-based paint means *paint* or surface coating affixed to a component in or on a *dwelling unit, structure, or steel structure*, excluding *paint* or surface coating affixed to a component in or on a *dwelling unit or structure* constructed on or after January 1, 1979.

Prohibited practices means work practices prohibited under section 54.1006 of this Code.

Property means real property, together with any and all improvements thereon.

Public nuisance has the same meaning as that set forth in section 11.0210 of this Code.

Regulated area means an area in which work is being performed that *disturbs or removes paint* and to which access is restricted in order to prevent migration of *paint* contaminants. *Regulated area* shall also include any area contaminated with

lead paint as a result of a breach or lack of *containment barriers* or a violation of the containment requirements set forth in section 54.1006.

Renovation means any modification of all or part of an existing *dwelling unit*, *structure*, or *steel structure* which modification *disturbs or removes paint*.

Renovator means any *person* who performs for compensation a *renovation*.

Responsible person means a *person* who a *Director* determines is responsible for causing or maintaining a *public nuisance* or a violation of this Code or applicable state codes. The term *responsible person* includes, but is not limited to, an *owner*, *tenant*, *person* with a legal interest in *property* or improvements thereon, and/or a *person* in possession of *property*.

Steel structure means any *structure* that is not a building and that has *exterior* surfaces made of steel or other metal including, but not limited to, bridges, billboards, walkways, water towers, steel tanks, and roadway or railway overpasses.

Structure has the same meaning as that set forth in section 113.0103 of this Code.

Transfer of responsibility certificate means a written certification, by a transferor and transferee of a *dwelling unit* constructed prior to January 1, 1979, that the transferor and the transferee mutually agree that responsibility for compliance with the requirements of Division 10 is assumed by the transferee of the *dwelling unit*.

Underlying defect means any condition or circumstance which generates, creates, or sustains a *lead hazard*.

XRF means a portable X-Ray Fluorescence Spectrometer.

§ 54.1004 Lead Hazard Unlawful

- (a) It is unlawful to create and/or maintain a *lead hazard* or allow a *lead hazard* to remain upon any *property, premises, surfaces, dwelling unit, structure, steel structure, or appurtenances*.
- (b) It is unlawful to fail to reduce or eliminate a *lead hazard*.

§ 54.1005 Lead-Safe Work Practice Standards Required

- (a) It is presumed that *paint* in the interior or on the *exterior* of all *dwelling units* and all *structures* constructed prior to January 1, 1979, and all *steel structures* is *lead-based paint*.
- (b) Any person who *disturbs or removes paint* from any surface in the interior or on the *exterior* of a *dwelling unit* or *structure* constructed prior to January 1, 1979, or from any surface on a *steel structure* shall use *lead-safe work practice standards* as set forth in section 54.1006, unless a *Certified Lead Inspector/Assessor* determines, prior to the commencement of activities which *disturb or remove paint*, that the concentration of *lead* in the *paint* is below 1000 ppm or .5 mg/cm².
- (c) Any person who *disturbs or removes paint* in any amount in the interior or on the *exterior* of a *dwelling unit* to correct a *lead hazard* where a *child* with blood lead levels greater than or equal to 10 µg/dL has been identified shall use *lead-safe work practice standards* as set forth in section 54.1006.
- (d) Section 54.1005 does not change the definition of *lead-based paint* and is only intended to identify when *lead-safe work practice standards* are required.

- (e) The failure to use *lead-safe* work practice standards as set forth in section 54.1005 shall constitute a violation of Division 10. The *lead-safe* work practice standards set forth in Division 10 are in addition to, and are not a substitute for, any requirements under state or federal law. Compliance with the *lead-safe* work practice standards set forth in section 54.1006 does not negate responsibility for a violation of section 54.1004.

§ 54.1006 Lead Safe Work Practice Standards

The *lead-safe* work practice standards in this section apply to all activities which *disturb or remove paint* which is *lead-based paint* or *presumed lead-based paint*.

(a) Notice to Occupants

Not less than seven business days before beginning activities which *disturb or remove paint*, a written notice, in accordance with state and federal law, shall be posted in a conspicuous location and provided to each *occupant* of a *dwelling unit* and/or *structure* where such activities will be conducted. A *person* who engages in unplanned activities that *disturb or remove paint*, in response to a sudden, unexpected event which, if not immediately attended to, would present a safety or public health hazard or would threaten *property* with significant damage, shall provide written notice to each *occupant* of a *dwelling unit* and/or *structure* prior to engaging in such activities.

- (1) The written notice shall identify the location in the *dwelling unit* and/or *structure* where such activities will take place, state that *lead-related* activities will be performed at the *dwelling unit* and/or *structure*, and state the dates for the performance of such activities.

- (2) The written notice shall be in the form of a sign and letter or memorandum, shall be placed in a conspicuous location open and available to *occupants* of or any *person* visiting the *dwelling unit* and/or *structure*, and shall prominently state the following: "Work is scheduled to be performed beginning [date] on this property that may disturb or remove lead-based paint."
 - (3) Prior to beginning activities which *disturb or remove paint*, the *owner* of the *property* shall provide each *occupant* with a copy of the U.S. Environmental Protection Agency pamphlet entitled "Protect Your Family From Lead-Based Paint in Your Home," unless the *owner* has previously provided this pamphlet to the *occupant*.
 - (4) For purposes of Division 10, *renovators* performing activities which *disturb or remove paint* shall comply with 40 Code of Federal Regulations part 745, subpart E, as they may be amended from time to time, by providing to each *occupant* the U.S. Environmental Protection Agency pamphlet entitled "Protect Your Family From Lead-Based Paint in Your Home," by complying with the required paperwork, and by maintaining the required records.
- (b) Occupant Protection
- Occupants shall not be permitted to enter the *regulated area* during the course of activities which *disturb or remove paint* (unless they are employed in the conduct of these activities in the *regulated area*), until after activities which *disturb or remove paint* have been completed and clearance as set forth in section 54.1006 has been achieved.

(c) Temporary Relocation

- (1) Occupants of a *dwelling unit* shall be temporarily relocated, before and during the course of activities which *disturb or remove paint*, to a suitable, decent, safe, comparable, and similarly accessible *dwelling unit* that does not have a *lead hazard*, unless:
 - (A) the activities will not disturb *lead-based paint*, *lead-contaminated dust* or *lead-contaminated soil*;
 - (B) the activities affect only the *exterior* of the *dwelling unit*, and windows, doors, ventilation intakes, and other openings in or near the *regulated area* are sealed during the course of the activities and cleaned afterward, and at least one entrance is free of *lead-contaminated dust*, *lead-contaminated soil*, and *lead paint contaminants*;
 - (C) the activities in the interior of the *dwelling unit* will be started and completed during the daytime within eight consecutive hours, the *regulated area* is contained so as to prevent the release of *lead-contaminated dust* and *lead paint contaminants* into other areas, and the activities do not create other safety, health, or environmental hazards (e.g., exposed live electrical wiring, release of toxic fumes, or on-site disposal of hazardous waste); or
 - (D) the activities in the interior of the *dwelling unit* will be completed within five consecutive days, the *regulated area* is secure so as to prevent the release of *lead-contaminated dust* and *lead paint contaminants* into other areas, the activities do not create other

safety, health, or environmental hazards, and, at the end of work on each day, the *regulated area* and the area within at least ten feet of the *regulated area* is cleaned to remove any visible dust or debris, and occupants have safe access to sleeping areas and bathroom and kitchen facilities.

- (2) Occupants' belongings shall be protected from contamination by *lead-contaminated dust* and *lead paint contaminants* during the course of activities which *disturb or remove paint*. Occupants' belongings in the *regulated area* shall be relocated to a safe and secure area outside the *regulated area* or shall be completely covered with an impermeable covering with all seams and edges taped or otherwise sealed.

(d) Worksite Preparation

The *regulated area* shall be prepared to prevent the release of dust, and to contain, within the *regulated area*, *lead-based paint chips*, *lead-contaminated dust*, *lead-contaminated soil*, and *lead paint contaminants* from activities which *disturb or remove paint* until they can be safely removed from the *regulated area*. Practices that minimize the spread of *lead-contaminated dust*, *lead-based paint chips*, *lead-contaminated soil*, and *lead paint contaminants* shall be used during preparation of the *regulated area* for work which *disturbs or removes paint*. The tables in Appendix "A" identify the minimum required levels of worksite preparation, as excerpted from the *HUD Guidelines*.

(e) Specialized Cleaning

After activities which *disturb or remove paint* have been completed, the *regulated area* shall be cleaned by using:

- (1) methods, products, and devices which are successful in removing *lead-contaminated dust*, such as a *HEPA* vacuum or other method of equivalent efficacy; and
 - (2) all purpose general detergents or *lead*-specific detergents or by following the *HUD Guidelines*.
- (f) Visible Lead Paint Contaminants
- All visible *lead paint contaminants* shall be cleaned up daily and removed from the *regulated areas* prior to completion of the activities which *disturb or remove paint*.
- (g) Disposal
- All waste generated from activities which *disturb or remove paint*, which is *lead-based paint* or *presumed lead-based paint*, is deemed hazardous waste pursuant to title 22 of the California Code of Regulations, as it may be amended from time to time, and must be disposed of lawfully.
- (h) Lead-Safe Work Practice Clearance Inspection Standards
- (1) A visual inspection to verify the absence of visible dust or debris must be performed upon the completion of all activities which *disturb or remove paint*:
 - (A) where the *paint* is *presumed lead-based paint* covering a surface area and/or affecting a component as described in the tables in Appendix "A"; or
 - (B) where *lead-based paint testing* performed on the *paint* revealed *lead* levels greater than 1000 ppm or 0.5 mg/cm².

A *renovator* shall record the results of the visual inspection on the form provided by the City of San Diego, shall maintain that form for a minimum of three years, and shall make all such forms available to the City of San Diego upon request.

(2) A *clearance inspection* must be performed upon the completion of all activities which *disturb or remove paint* and after visual inspection:

(A) where the *paint* is *presumed lead-based paint* covering a surface area and/or affecting a component as described in the tables in Appendix "A"; or

(B) where *lead-based paint testing* performed on the *paint* revealed *lead* levels greater than 5000 ppm or 1.0 mg/cm².

A copy of the *DPH* Form 8552 for each *clearance inspection* shall be submitted to the City of San Diego at:

Environmental Services Department
Lead Safe Neighborhoods Program Form 8552
9601 Ridgeway Court, Ste 310
San Diego, CA 92123

Submittal of the 8552 form to the City of San Diego does not satisfy the requirement of title 17 of the California Code of Regulations for submittal of the 8552 form to the *DPH*.

(3) The *lead-safe work practice clearance inspection* standards shall be performed only by a *Certified Lead Inspector/Assessor* or *certified lead* project monitor.

(4) All *clearance inspection* procedures shall be in compliance with 40 Code of Federal Regulations part 745.227, as it may be amended

from time to time, and shall meet title 17 of the California Code of Regulations clearance guidelines, as it may be amended from time to time.

(i) Prohibited Practices

It is unlawful to use *prohibited practices* while conducting activities which *disturb or remove paint* including, but not limited to:

- (1) acetylene or propane burning and torching;
- (2) scraping, sanding, or grinding without *containment barriers* or a *HEPA* local vacuum exhaust tool;
- (3) hydro-blasting or high-pressure wash without *containment barriers*;
- (4) abrasive blasting or sandblasting without *containment barriers* or a *HEPA* local vacuum exhaust tool; or
- (5) heat guns operating above 1,100 degrees fahrenheit;

§ 54.1007 Lead Hazards in Housing

(a) Presumption

For all *dwelling units* constructed prior to January 1, 1979, it is presumed that the *paint* in the interior or on the *exterior* of the *dwelling unit* is *lead-based paint*.

(b) Owner's Opportunity to Rebut Presumption

- (1) The *owner* of a *dwelling unit* constructed prior to January 1, 1979, may apply to the *Department* to have such *dwelling unit* exempted from the presumption contained in section 54.1007(a) when either:

- (A) *lead-based paint testing* results demonstrate that no *lead paint* is present in the interior or on the *exterior* of such *dwelling unit*; or
 - (B) documentation from a *Certified Lead Inspector/Assessor* demonstrates that alterations have been made to the *dwelling unit* and such alterations have resulted in the removal of all *lead-based paint* in that *dwelling unit*.
- (2) The *Director* shall establish written policies that set forth criteria for granting the exemption described in section 54.1007(b).
- (c) Owner's Duty to Correct
- (1) *The existence of a lead hazard in any dwelling unit is hereby declared* to constitute a condition dangerous to life and health. The *owner* of a *dwelling unit* shall take action to prevent the occurrence of a *lead hazard* and shall expeditiously correct a *lead hazard*, upon receiving notice of its existence, in accordance with section 54.1006. If the *lead hazard* is caused in whole or in part by an *underlying defect*, the *owner* of the *dwelling unit* shall correct the *underlying defect* to prevent a further *lead hazard*.
 - (2) The *owner* of a *dwelling unit* shall correct all identified *lead hazards* and complete the *clearance inspection* within thirty (30) days of receiving notice of the existence of the *lead hazard*, unless:
 - (A) the *Director* or designee determines that a *lead hazard* is present, which *lead hazard* constitutes an immediate threat to the health and safety of occupants of the *dwelling unit*, in which case the

owner of the *dwelling unit* shall comply with the *Director's* or
designee's directives; or

- (B) the *owner* of the *dwelling unit* files a statement of intent and work plan demonstrating the need for additional time to correct the *lead hazard*, a proposed work schedule, and the methods by which the *owner* will accomplish compliance with Division 10 including, but not limited to, compliance with the temporary relocation requirements of section 54.1006(c), in which case the *Director* or designee may extend the time for compliance with Division 10.
- (3) Within seven days after completing the *clearance inspection*, the *owner* of a *dwelling unit* shall provide proof of compliance with section 54.1007 by submitting a copy of the *DPH* Form 8552 for each *clearance inspection* to the City of San Diego at:

Environmental Services Department
Lead Safe Neighborhoods Program Form 8552
9601 Ridgehaven Court, Ste 310
San Diego, CA 92123

Submittal of the 8552 form to the City of San Diego does not satisfy the requirement of title 17 of the California Code of Regulations for submittal of the 8552 form to the *DPH*.

- (d) Administrative abatement of a *lead hazard* shall be in accordance with the procedures provided in San Diego Municipal Code Chapter 1, Article 2, Division 6.

- (e) Summary abatement of an *imminent lead hazard* shall be in accordance with the procedures provided in San Diego Municipal Code Chapter 1, Article 2, Division 7.
- (f) Judicial abatement of a *lead hazard* shall be in accordance with the procedures provided in San Diego Municipal Code Chapter 1, Article 2, Division 2.

§ 54.1008 Procedures for Occupant Relocation

- (a) The *responsible person* is responsible for the relocation and associated costs of any *occupants* displaced as a result of a judicial, administrative or summary abatement action pursuant to Division 10 and must follow applicable requirements of state law.
- (b) If relocation costs are paid by the City, the costs shall be assessed against the *responsible person* as an administrative or summary abatement cost or as part of a judicial action and may be recovered pursuant to procedures in San Diego Municipal Code Chapter 1, Article 3, Division 3 (Recovery of Abatement Costs).

§ 54.1009 Visual Lead Inspection and Correction Prior to Re-Occupancy of Rental Housing

For all rental *dwelling units* constructed prior to January 1, 1979, the *responsible person* shall conduct a visual inspection for *deteriorated paint* each time a tenant vacates the *dwelling unit* and prior to re-occupancy of the *dwelling unit*, unless a *lead-free certificate* has been issued for the *dwelling unit*. *Deteriorated paint* shall be corrected prior to re-occupancy in accordance with Division 10, unless

lead-based paint testing proves the *deteriorated paint* is not *lead-based paint*.

Inspection, testing, and correction documents shall be maintained for three years and shall be made available to the City of San Diego upon request.

§ 54.1010 Identification and Remediation of Lead Hazards upon Change of Ownership

- (a) Upon entering into a listing agreement for the sale, transfer, or exchange of a *dwelling unit* constructed prior to January 1, 1978, a real estate agent shall notify the seller or transferor of the *dwelling unit* of the provisions of section 54.1007.
- (b) Upon entering into a limited service agreement or a fee for service agreement for the advertising or marketing of a *dwelling unit* constructed prior to January 1, 1978, the *person* offering such services shall notify the seller or transferor of the *dwelling unit* of the provisions of section 54.1007.
- (c) Prior to a *change of ownership*, the transferor of a *dwelling unit* constructed prior to January 1, 1978, shall have a *lead risk assessment* performed on the *dwelling unit* by a *Certified Lead Inspector/Assessor* and shall have all identified *lead hazards* corrected in accordance with Division 10 and all applicable state and federal requirements, unless the *dwelling unit* is exempt pursuant to section 54.1010(h). The requirements of this section shall apply to a *change of ownership* which occurs on or after 180 calendar days from the effective date of Division 10.
- (d) Compliance with section 54.1010(c) shall be demonstrated as follows:

- (1) Upon completing the *lead risk assessment* and correcting all identified *lead hazards*, the transferor and *Certified Lead Inspector/Assessor* shall sign a *lead-safe certificate* or *lead-free certificate* certifying compliance with the requirements of Division 10.
- (2) Within seven days thereafter, the transferor shall forward the *lead-safe certificate* or *lead-free certificate* to the transferee for review and signature, together with all documents prepared in connection with section 54.1010 relating to *lead inspections*, *lead remediation*, and *clearance inspections* for the *dwelling unit*.
- (3) Within seven days of receipt of the signed *lead-safe certificate* or *lead-free certificate*, the transferee shall sign the *lead-safe certificate* or *lead-free certificate*, thereby acknowledging awareness and understanding of the requirements of Division 10, and shall submit the *lead-safe certificate* or *lead-free certificate* along with the associated cost-recovery fee to:

City of San Diego
Environmental Services Lead Safe Certificate
9601 Ridgeway Court, Ste 310
San Diego, CA 92123
- (4) If the transfer of the *dwelling unit* is accomplished through an escrow, the transferor also shall file a copy of the *lead-safe certificate* or *lead-free certificate* with the escrow agent before the close of escrow.
- (e) Prior to a *change of ownership*, the transferor and the transferee of a *dwelling unit* constructed prior to January 1, 1978, may agree to transfer responsibility for compliance with section 54.1010(c) to the transferee.

In the event the transferor and transferee of a *dwelling unit* agree that the transferee shall assume this responsibility, then prior to the *change of ownership*, the transferor and the transferee shall complete the following procedures:

- (1) The transferor and the transferee shall sign a *transfer of responsibility certificate* certifying that the transferee has assumed responsibility for complying with section 54.1010(c).
- (2) After the transferor and the transferee have signed the *transfer of responsibility certificate*, the transferor shall submit the *transfer of responsibility certificate* along with the associated cost-recovery fee to:

City of San Diego
Environmental Services Lead Safe Certificate
9601 Ridgeway Court, Ste 310
San Diego, CA 92123
- (3) If the transfer of the *dwelling unit* is accomplished through an escrow, the transferor also shall file a copy of the *transfer of responsibility certificate* with the escrow agent before the close of escrow.
- (4) The transferee shall perform a *lead risk assessment*, correct all identified *lead hazards*, and complete the *clearance inspection* within ninety days of the *change of ownership*, unless:
 - (A) the *Director* or designee determines that a *lead hazard* is present, which *lead hazard* constitutes an immediate threat to the health and safety of *occupants* of the *dwelling unit*, in which case the transferee shall comply with the *Director's* or designee's directives; or

- (B) the transferee files a statement of intent and work plan demonstrating the need for additional time, a proposed work schedule, and the methods by which the transferee will accomplish compliance with Division 10 including, but not limited to, compliance with the temporary relocation requirements of section 54.1006(c), in which case the *Director* or designee may extend the time for compliance with Division 10.
- (5) Upon completing the *lead risk assessment* and correcting all identified *lead hazards*, the transferee and the *Certified Lead Inspector/Assessor* shall sign a *lead-safe certificate* or *lead-free certificate* certifying compliance with the requirements of Division 10.
- (6) Within thirty days of the completion of the requirements of section 54.1010(c), the transferee shall submit the signed *lead-safe certificate* or *lead-free certificate* and all *DPH* Forms 8552 associated with *lead hazard* control work performed on the interior and *exterior* of the *dwelling unit* along with the associated cost-recovery fee to:

City of San Diego
Environmental Services Lead Safe Certificate
9601 Ridgehaven Court, Ste 310
San Diego, CA 92123

- (f) The *lead risk assessment* must be conducted according to the following procedures:
- (1) Background information shall be collected regarding the physical characteristics of the *dwelling unit* use patterns that may cause *lead* exposure to a *child*.

- (2) Each surface with *deteriorated paint*, as determined by documented methodologies, shall be tested for the presence of *lead*. Every other surface which is a potential source of *lead hazards*, as determined by documented methodologies, shall be tested for the presence of *lead*.
- (3) Single surface dust sampling from windows and floors shall be collected in all living areas where *deteriorated paint* has been identified.
- (4) If any *deteriorated paint* is present on the *exterior* of a *dwelling unit*, soil samples shall be collected and analyzed for *lead* concentrations in the *exterior* play areas where bare soil is present and in the dripline/ foundation areas where bare soil is present.
- (5) The *lead risk assessment* report, prepared by the *Certified Lead Inspector/Assessor* shall include the following information:
 - (A) date of assessment;
 - (B) address of each *dwelling unit*;
 - (C) date of construction of each *dwelling unit*;
 - (D) name, address, and telephone number of each *owner* of each *dwelling unit*;
 - (E) name, signature, and certification of the *Certified Lead Inspector/Assessor* conducting the assessment;
 - (F) name, address, and telephone number of each *accredited laboratory* conducting analysis of collected samples;
 - (G) results of the visual inspection;

- (H) testing methods and sampling procedures employed for *paint* analysis;
 - (I) specific locations of each *painted* component tested for the presence of *lead*;
 - (J) all data collected from on-site testing, including quality control data and, if used, the serial number of any *XRF* device used;
 - (K) all results of laboratory analysis on collected *paint*, soil, and dust samples;
 - (L) all other sampling results;
 - (M) all background information collected pursuant to section 54.1010;
 - (N) to the extent that they are used as part of the *lead hazard* determination, the results of all previous inspections or analyses for the presence of *lead paint* or other assessments related to *lead hazards*;
 - (O) a description of the location, type, and severity of identified *lead hazards* and all other potential *lead hazards*; and
 - (P) a description of interim controls and/or abatement options for each identified *lead hazard*. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.
- (g) The transferor of a *dwelling unit* constructed prior to January 1, 1978, shall not be required to conduct a *lead risk assessment* when a *change of ownership* occurs as a result of the following:

- (1) a court order, including an order by a probate court in the administration of an estate;
 - (2) a foreclosure or voluntary or involuntary bankruptcy;
 - (3) the exercise of eminent domain;
 - (4) the administration of a deceased person's estate, guardianship, conservatorship, or trust;
 - (5) one title co-holder of real *property* transferring, selling, or exchanging with one or more other title co-holders;
 - (6) a transfer, without consideration, from one family member to another family member; or
 - (7) a decree of dissolution of marriage, a decree of legal separation, or a *property* settlement agreement incidental to any such decree.
- (h) The transferor of a *dwelling unit* constructed prior to January 1, 1978, shall not be required to perform a *lead risk assessment* if a *lead-free certificate* has been issued for the *dwelling unit*.
- (i) The *owner* of the *dwelling unit* shall maintain the *lead risk assessment* report and supporting documentation for a period of five years from the date of the report and shall make the report and supporting documentation available to the City of San Diego upon request.

§ 54.1011 Duty to Notify

- (a) All *home improvement stores* and stores which sell or rent high pressure water equipment shall maintain a supply of the *lead-safe work practices* pamphlets

prepared and supplied by the *Director*. The pamphlets shall be prominently displayed where painting supplies are sold and high pressure water equipment is sold or rented and shall be provided upon request to customers or other invitees.

- (b) *Home improvement stores* and stores which sell or rent high pressure water equipment shall conspicuously post the *Lead-Safe Work Practices* sign prepared by the *Director* or a sign of substantially the same size, typeface, and language. The sign shall make the following statement, or a substantially equivalent statement, in large or boldface capital letters no less than one-half inch in size:

IT IS UNLAWFUL TO CREATE A LEAD HAZARD.
YOU ARE REQUIRED TO USE LEAD-SAFE WORK
PRACTICES IF YOU LIVE IN A PRE-1979 DWELLING
AND WILL BE DISTURBING PAINT. PAINTING AND
REMODELING CAN EXPOSE YOUR FAMILY TO
LEAD. ASK FOR A FREE PAMPHLET ON LEAD-
BASED PAINT HAZARDS.

- (c) For all *dwelling units* constructed prior to January 1, 1978, the *responsible person* shall be in compliance with 24 Code of Federal Regulations parts 35.80 – 98 inclusive.
- (d) All *DPH-certified lead personnel* conducting *lead hazard evaluation* (e.g., risk assessment, *clearance inspection*, *paint testing*, dust sampling, etc.) shall deliver a completed copy of the *DPH Lead Hazard Evaluation Report* (Form 8552) to the City of San Diego, if the *property* evaluated is located within the

city limits of the City of San Diego, within thirty days of conducting the evaluation. The copy shall be submitted to:

City of San Diego
Environmental Services Lead Form 8552
9601 Ridgehaven Court, Suite 310
San Diego, CA 92123

Submittal of the 8552 form to the City of San Diego does not satisfy the requirement of title 17 of the California Code of Regulations for submittal of the 8552 form to the *DPH*.

§ 54.1012 Child-Care Facility

Each *child-care facility* licensed or approved by the State of California, except for a *child-care facility* located on public school property, shall require a parent or legal guardian of each *child* between the ages of six months and seven years of age inclusive to provide a statement from a physician or health care provider that the *child* has been screened for *lead* poisoning. This statement must indicate that the screening of the *child* has been performed in accordance with applicable criteria mandated by the State of California. This statement shall be provided prior to admission, but in no event later than thirty days after admission. The *child-care facility* shall maintain the statement for three years after receipt and shall make such statements available to the City for review during normal operating hours upon request. Nothing in section 54.1012 shall be construed to require any *child* to undergo a blood *lead* level screening or test when the parent or guardian of the *child* objects on the grounds that the screening or test conflicts with his or her religious beliefs.

§ 54.1013 Enforcement Authority

- (a) The *Director* is authorized to administer and enforce the provisions of Chapter 5, Article 4, Division 10 of this Code. The *Director* or anyone designated by the *Director* to be an *enforcement official* may exercise any enforcement powers as provided in Chapter 1 of this Code.
- (b) In addition to the general enforcement powers provided in Chapter 1 of this Code, the *Director* or designee may exercise any of the following supplemental enforcement powers as the *Director* or designee determines may be necessary under the circumstances.
- (1) Inspection Authority
- The *Director* or designee is authorized to inspect the interior and exterior of any *dwelling unit, structure, steel structure, adjacent properties, or premises* where conditions may exist which could amount to a *lead hazard* or where activities which may *disturb or remove paint*, which is *lead-based paint* or *presumed lead-based paint*, have been, are being, or will be conducted, for the purpose of determining the validity of a complaint or compliance with Division 10. All inspections shall be conducted in a reasonable manner. If an *owner, occupant, or agent* refuses permission to enter or inspect, the *Director* or designee may seek an administrative inspection warrant pursuant to the procedures provided for in California Code of Civil Procedure sections 1822.50 through 1822.60.

(2) Sampling Authority

The *Director* or designee may collect *paint*, dust, and soil samples from the interior or *exterior* of a *dwelling unit, structure, steel structure, adjacent properties*, or *premises* where conditions may exist which amount to a *lead hazard* or where activities which *disturb or remove paint*, which is *lead-based paint* or *presumed lead-based paint*, have been, are being, or will be conducted, for the purpose of determining the validity of a complaint or compliance with Division 10.

(3) Training

The *Director* or designee may require a *responsible person*, and any employee, agent, or representative of a *responsible person* in violation of Division 10 to attend an approved *lead-safe* work practice training course. The *Director* or designee shall require proof of attendance and satisfactory completion of the course, including certification from the instructor or provider of the course. Upon receipt of said proof, the *Director* or designee, in his or her sole discretion, may reduce or eliminate an administrative penalty, if any, imposed for a violation of Division 10.

§ 54.1014 Enforcement Remedies

- (a) It is unlawful to violate any provision or requirement of Division 10. The failure to comply with any requirement of Division 10 constitutes a violation of Division 10. Violations of the provisions or requirements of Division 10

may be prosecuted as misdemeanors subject to the penalties provided in section 12.0201 of this Code. The *Director* or designee alternatively may seek injunctive relief or civil penalties in the Superior Court pursuant to section 12.0202 of this Code or may pursue any administrative remedy provided in Chapter 1, Article 2, Divisions 3 through 10 inclusive, of this Code.

- (b) Remedies under section 54.1014 are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

§ 54.1015 Cost Recovery

- (a) Reinspection Fee

Whenever the *Director* or designee reinspects a *dwelling unit, structure, steel structure, adjacent properties, or premises* to determine compliance with Division 10, this Code, or applicable state law, the *Director* may assess and collect fees, as set forth in Chapter 1, Article 3, Division 1 of this Code, against the *responsible person* to recover the fully ascertainable costs to the City for the following:

- (1) *dwelling unit, structure, or steel structure* reinspections;
- (2) *lead-safe work practice* reinspections;
- (3) laboratory analysis; and
- (4) sample collection fees.

- (b) Fees, including but not limited to Reinspection Fees, fees set forth in section 54.1010, and increases to Building Permit fees and Demolition/Removal Permit fees, which are imposed for purposes of regulation, education, and enforcement under Division 10 shall be segregated and deposited into a separate account within a fund. All such fees and accrued interest thereon shall be used solely and exclusively for the purposes for which the fee was imposed.
- (c) The assessment and collection of these fees shall not preclude the imposition of any administrative or judicial penalty or fine for violations of this Code or applicable state laws.
- (d) Civil penalties collected pursuant to Division 10 and investigative costs associated with the enforcement action shall be deposited in the Code Enforcement Civil Penalty Fund established pursuant to section 13.0402 of this Code.
- (e) A fee schedule shall be established and revised as necessary by the City Manager in accordance with Council Policy and City Administrative Regulations to reflect current costs. The fee schedule shall be filed in the Rate Book of City Fees and Charges in the City Clerk's Office.

§ 54.1016 Strict Liability Offenses

Violations of Division 10 shall be treated as strict liability offenses regardless of intent.

APPENDIX "A"

*INTERIOR WORKSITE PREPARATION LEVELS (NOT INCLUDING WINDOWS)				
Description	Level 1	Level 2	Level 3	Level 4
Typical Applications (Hazard Controls)	Dust removal and any abatement or interim control method disturbing no more than 2 square feet of painted surface per room.	Any interim control or abatement method disturbing between 2 and 10 square feet of painted surface per room.	Same as Level 2.	Any interim control or abatement method disturbing more than 10 square feet per room.
Time Limit Per Dwelling	One work day.	One work day.	Five work days.	None.
Containment and Barrier System	Single layer of plastic sheeting on floor extending 5 feet beyond the perimeter of the treated area in all directions. No plastic sheeting on doorways is required, but a low physical barrier (furniture, wood planking) to prevent inadvertent access by resident is recommended.	Two layers of plastic on entire floor or isolate the work area. Plastic sheet with primitive airlock flap on all doorways. Doors secured from inside the work area need not be sealed.	Two layers of plastic on entire floor or isolate the work area. Plastic sheet with primitive airlock flap on all doorways to work areas. Doors secured from inside the work area need not be sealed. Overnight barrier should be locked or firmly secured.	Two layers of plastic on entire floor or isolate the work area. If entire unit is being treated, cleaned, and cleared, individual room doorways need not be sealed. If only a few rooms are being treated, seal all doorways with primitive airlock flap to avoid cleaning entire dwelling. Doors secured from inside the work area need not be sealed.
Warning Signs	Required at entry to room but not on building (unless exterior work is also under way).	Same as Level 1.	Posted at main and secondary entryways, if resident will not be present to answer the door.	Posted at building exterior near main and secondary entryways, if resident will not be present to answer the door.

*INTERIOR WORKSITE PREPARATION LEVELS (NOT INCLUDING WINDOWS)				
Description	Level 1	Level 2	Level 3	Level 4
Ventilation System	Dwelling ventilation system turned off, but vents need not be sealed with plastic if they are more than 5 feet away from the surface being treated. Negative pressure zones (with "negative air" machines) are not required, unless large supplies of fresh air must be admitted into the work area to control exposures to other hazardous substances (for example, solvent vapors).	Turned off and all vents in room sealed with plastic. Negative pressure zones (with "negative air" machines) are not required, unless large supplies of fresh air must be admitted into the work area to control exposure to other hazardous substances (for example, solvent vapors).	Same as Level 2.	Same as Level 2.
Furniture	Left in place uncovered if furniture is more than 5 feet from working surface. If within 5 feet, furniture should be sealed with a single layer of plastic or moved for paint treatment. No covering is required for dust removal.	Removed from work area. Large items that cannot be moved can be sealed with a single layer of plastic sheeting and left in work area.	Same as Level 2.	Same as Level 2.

*INTERIOR WORKSITE PREPARATION LEVELS (NOT INCLUDING WINDOWS)				
Description	Level 1	Level 2	Level 3	Level 4
Cleanup (See Chapter 14 of HUD Guidelines for further discussion of cleanup methods)	HEPA vacuum, wet wash, and HEPA vacuum all surfaces and floors extending 5 feet in all directions from the treated surface. For dust removal work alone, a HEPA vacuum and wet wash cycle is adequate (i.e., no second pass with a HEPA vacuum is needed). Also wet wash and HEPA vacuum floor in adjacent area(s) used as pathway to work area. Do not store <i>lead paint contaminants</i> inside dwelling overnight; transfer to a locked secure area at the end of each day.	HEPA vacuum, wet wash, and HEPA vacuum <i>all</i> surfaces in room. Also wet wash and HEPA vacuum floor in adjacent area(s) used as pathway to work area. Do not store <i>lead paint contaminants</i> inside dwelling overnight; use a secure locked area.	Remove top layer of plastic from floor and discard. Keep bottom layer of plastic on floor for use on the next day. HEPA vacuum, wet wash, and HEPA vacuum <i>all</i> surfaces in room. Also wet wash and HEPA vacuum floor in adjacent area(s) used as pathway to work area. Do not store <i>lead paint contaminants</i> inside dwelling overnight; use a secure locked area.	Full HEPA vacuum, wet wash, and HEPA vacuum cycle, as detailed in Chapter 14 of HUD Guidelines.
Clearance Inspection	Visual Clearance only	<i>Clearance inspection</i> if it is <i>presumed lead-based paint</i> or testing determines <i>lead</i> levels are greater than 5000 ppm or 1.0 mg/cm ² .	<i>Clearance inspection</i> if it is <i>presumed lead-based paint</i> or testing determines <i>lead</i> levels are greater than 5000 ppm or 1.0 mg/cm ² .	<i>Clearance inspection</i> if it is <i>presumed lead-based paint</i> or testing determines <i>lead</i> levels are greater than 5000 ppm or 1.0 mg/cm ² .

- * Worksite preparation levels for floor sanding and abrasive blasting on surfaces that contain *lead paint* or *presumed lead-based paint* are not included in this table. Work shall follow the *HUD Guidelines* chapter 8, section VII.

Note: Primitive air locks are constructed using two sheets of plastic. The first one is taped on the top, the floor, and two sides of doorway. Next, cut a slit 6 feet high down the middle of the plastic; do not cut the slit all the way down to the floor. Tape the second sheet of plastic across the top of the door only, so that it acts as a flap. The flap should open *into* the work area.

APPENDIX "A"

*EXTERIOR WORKSITE PREPARATION LEVELS (NOT INCLUDING WINDOWS)			
Description	Level 1	Level 2	Level 3
Typical Applications	Any interim control or abatement method disturbing less than 10 square feet of exterior painted surface per dwelling. Also includes soil control work.	Any interim control or abatement method disturbing between 10 to 50 square feet of exterior painted surface per dwelling. Also includes soil control work.	Any interim control or abatement method disturbing more than 50 square feet of exterior painted surface per dwelling. Also includes soil control work.
Time Limit Per Dwelling	One day.	None.	None.
Containment and Barrier System	One layer of plastic on ground extending 10 feet beyond the perimeter of working surfaces. Extend plastic further if necessary to collect paint chips and associated debris. Do not anchor ladder feet on top of plastic (Puncture the plastic to anchor ladders securely to ground). For all other exterior plastic surfaces, protect plastic with boards to prevent puncture from falling debris, nails, etc., if necessary. Raise edges of plastic to create a basin to prevent contaminated runoff in the event of unexpected precipitation. Secure plastic to side of building with tape or other anchoring system (no gaps between plastic and building). Weight all plastic sheets down with two-by-fours or similar objects. Keep all windows within 20 feet of working surfaces closed, including windows of adjacent structures.	Same as Level 1.	Same as Level 1.

APPENDIX "A"

*EXTERIOR WORKSITE PREPARATION LEVELS (NOT INCLUDING WINDOWS)			
Description	Level 1	Level 2	Level 3
Playground Equipment, Toys, Sandbox	Remove all movable items to a 20-foot distance from working surfaces. Items that cannot be readily moved to a 20-foot distance can be sealed with taped plastic sheeting.	Same as Level 1.	Same as Level 1.
Security	Erect temporary fencing or barrier tape at a 20-foot perimeter around working surfaces (or less if distance to next building or sidewalk is less than 20 feet). If an entryway is within 10 feet of working surfaces, require use of alternative entryway. If practical install vertical containment to prevent exposure. Use a locked dumpster, covered truck, or locked room to store <i>lead paint contaminants</i> before disposal.	Same as Level 1.	Same as Level 1.
Signs	Post warning signs on the building and at a 20-foot perimeter around building (or less if distance to next building or sidewalk is less than 20 feet).	Same as Level 1.	Same as Level 1.
Weather	Do not conduct work if wind speeds are greater than 20 miles per hour or if paint chips and/or associated debris are blown off containment. Work must stop and cleanup must occur before rain begins.	Same as Level 1.	Same as Level 1.

*EXTERIOR WORKSITE PREPARATION LEVELS (NOT INCLUDING WINDOWS)			
Description	Level 1	Level 2	Level 3
Cleanup (See Chapter 14 of HUD Guidelines)	Do not leave <i>lead paint contaminants</i> or plastic out overnight if work is not completed. Keep all <i>lead paint contaminants</i> in secured area until final disposal.	Same as Level 1.	Same as Level 1.
Porches	If dwelling is occupied, one lead-safe entryway must be made available to residents at all times. Do not treat front and rear porches at the same time if there is not a third doorway.	Same as Level 1.	Same as Level 1.
Clearance Inspection	Visual <i>Clearance Inspection</i>	<i>Clearance inspection</i> required if it is <i>presumed lead-based paint</i> or testing determines <i>lead</i> levels are greater than 5000 ppm or 1.0 mg/cm ² .	<i>Clearance inspection</i> required if it is <i>presumed lead-based paint</i> or testing determines <i>lead</i> levels are greater than 5000 ppm or 1.0 mg/cm ² .

- * Worksite preparation levels for floor sanding and abrasive blasting on surfaces that contain *lead paint* or *presumed lead-based paint* are not included in this table. Work shall follow the HUD Guidelines chapter 8, section VII.

WINDOW TREATMENT OR REPLACEMENT WORKSITE PREPARATION	
Appropriate Applications	Any Window Treatment or Replacement
Time Limit Per Dwelling	None.

APPENDIX "A"

WINDOW TREATMENT OR REPLACEMENT WORKSITE PREPARATION	
Appropriate Applications	Any Window Treatment or Replacement
Containment and Barrier System	One layer of plastic on ground or floor extending 5 feet beyond the perimeter of window being treated/ replaced. Two layers of plastic taped to interior wall if working on window from outside; if working from the inside, tape two layers of plastic to exterior wall. If working from inside, implement a minimum interior Worksite Preparation Level 2. Children cannot be present in an interior room where plastic sheeting is located due to suffocation hazard. Do not anchor ladder feet on top of plastic (place a hard surface such as plywood under ladder). For all other exterior plastic surfaces, protect plastic with boards to prevent puncture from falling debris, nails, etc. (if necessary). Secure plastic to side of building with tape or other anchoring system (no gaps between plastic and building). Weigh all plastic sheets down with two-by-fours or similar objects. All windows in dwelling should be kept closed. All windows in adjacent dwellings that are closer than 20 feet to the work area should be kept closed.
Signs	Post warning signs on the building and at a 20-foot perimeter around building (or less if distance to next building or sidewalk is less than 20 feet). If window is to be removed from inside, no exterior sign is necessary.
Security	Erect temporary fencing or barrier tape at a 20-foot perimeter around building (or less if distance to next building or sidewalk is less than 20 feet). Use a locked dumpster, covered truck, or locked room to store <i>lead paint contaminants</i> before disposal.
Weather	Do not conduct work if wind speeds are greater than 20 miles per hour or if paint chips and/or associated debris are blown off containment. Work must stop and cleanup must occur before rain begins.
Playground Equipment, Toys, Sandbox	Remove from work area and adjacent areas. Remove all items to a 20-foot distance from dwelling. Large, unmovable items can be sealed with taped plastic sheeting.
Cleaning	If working from inside, HEPA vacuum, wet wash, and HEPA vacuum all interior surfaces within 10 feet of work area in all directions. If working from the exterior, no cleaning of the interior is needed, unless the containment is breached. Similarly, no cleaning is needed on the exterior if all work is done on the interior and the containment is not breached. If containment is breached, then cleaning on both sides of the window should be performed. No <i>lead paint contaminants</i> or plastic should be left out overnight if work is not completed. All <i>lead paint contaminants</i> must be kept in a secure area until final disposal.
Clearance Inspection	<i>Clearance inspection</i> required if work is performed from interior of <i>dwelling unit</i> and if it is <i>presumed lead-based paint</i> or testing determines <i>lead levels</i> are greater than 5000 ppm or 1.0 mg/cm ² .

(O-2008-90)

Section 2. That this activity is not subject to the California Environmental Quality Act pursuant to CEQA guideline 15060(c)(2) because this activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.

Section 3. That a full reading of this ordinance is dispensed with prior to passage, since a written copy was made available to the City Council and the public prior to the day of its passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Grace C. Lowenberg
Grace C. Lowenberg
Deputy City Attorney

GCL:mb
02/27/08
Or.Dept:ESD
O-2008-90

I hereby certify that the foregoing ordinance was passed by the Council of the City of San Diego, at its meeting of _____.

ELIZABETH S. MALAND, City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

(O-2008-90)

OLD LANGUAGE - ~~Stricken~~
NEW LANGUAGE - Underlined

ORDINANCE NUMBER O-_____ (New Series)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE CITY OF SAN DIEGO AMENDING CHAPTER 5, ARTICLE 4, DIVISION 10 OF THE SAN DIEGO MUNICIPAL CODE BY RENAMING DIVISION 10; BY AMENDING SECTIONS 54.1001, 54.1002, 54.1003, 54.1004, 54.1005, AND 54.1006; AND BY ADDING SECTIONS 54.1007, 54.1008, 54.1009, 54.1010, 54.1011, 54.1012, 54.1013, 54.1014, 54.1015, AND 54.1016; ALL RELATING TO LEAD HAZARD PREVENTION AND CONTROL; AND FINDING AS TO ENVIRONMENTAL IMPACT.

Division 10**Abatement of Lead Hazards****~~§54.1001—Findings and Declaration of Purpose~~**

~~The Council of the City of San Diego finds and declares that:~~

- ~~(a) The Centers for Disease Control identified childhood lead poisoning as one of the most common pediatric health problems in the United States. While adults can be affected by lead hazards, children under seven are especially at risk.~~
- ~~(b) Lead is most harmful to young children because it interferes with the development of the brain, as well as other organs and systems such as the kidneys and nervous system. Lead poisoning has been linked to reduced IQ, attention deficit disorder, hearing loss, impaired growth, and reading and learning disabilities. Between 1992 and 2000, there were 377 reported cases of childhood lead poisoning in the City of San Diego.~~

- (c) ~~Studies show that children from low-income families, living in older, poorly maintained housing are at higher risk for lead poisoning. According to the 1990 United States census, approximately seventy percent of the housing units in the City of San Diego were built before 1978, and approximately twenty-four percent of the City's housing stock were constructed before 1950.~~
- (d) ~~Childhood lead poisoning is preventable. Common household lead hazards can be permanently eliminated via abatement or controlled through interim measures.~~
- (e) ~~A lead hazard found on any property, dwelling, or structure within the City of San Diego is a public nuisance when a child is diagnosed with lead poisoning as a result of being exposed to the hazard.~~

~~§54.1002 Definitions~~

~~"Child" means any person under seven years of age.~~

~~"Director" has the same meaning as that in Municipal Code section 11.0210.~~

~~"Dwelling" means a room or suite of rooms in a building or portion thereof, used, intended or designed to be used or occupied for living purposes.~~

~~"Lead-based paint" has the same meaning as that in Title 17 of the California Code of Regulations section 35033.~~

~~"Lead-contaminated dust" has the same meaning as that in Title 17 of the California Code of Regulations section 35035.~~

~~"Lead-contaminated soil" has the same meaning as that in Title 17 of the California Code of Regulations section 35036.~~

~~"Lead hazard" has the same meaning as that in Title 17 of the California Code of Regulations section 35037.~~

~~"Lead poisoning" has the same meaning as that in California Health and Safety Code section 105280.~~

~~"Premises" has the same meaning as that in Municipal Code section 54.0202.~~

~~"Public nuisance" has the same meaning as that in Municipal Code section 11.0210.~~

~~"Responsible person" has the same meaning as that in Municipal Code section 11.0210.~~

~~"Structure" has the same meaning as that in Municipal Code section 113.0103.~~

~~§ 54.1003 Enforcement Authority~~

~~The *Director* of the Neighborhood Code Compliance Department, or any other Director authorized by the City Manager, is authorized to administer and enforce the provisions of this Division. The Director or anyone designated by the Director to be an Enforcement Official may exercise any enforcement powers as provided in Division 1, Article 2 of Chapter 1 of this Code.~~

~~§54.1004 Enforcement Remedies~~

~~Violations of this Division may be prosecuted as misdemeanors subject to the fines and custody provided in Municipal Code Section 12.0201. The Director may also seek injunctive relief and civil penalties in the Superior Court pursuant to Municipal Code section 12.0202 or pursue any administrative remedy provided in Chapter 1 of this Code.~~

~~§54.1005 Strict Liability Offenses~~

~~Violations of this Division shall be treated as strict liability offenses regardless of intent.~~

§54.1006 Lead Hazard Unlawful

- (a) ~~It is unlawful for any responsible person to maintain a lead hazard or allow a lead hazard to remain upon any premises, surfaces, dwelling, structure, or appurtenances that is within his or her control, ownership, or possession.~~
- (b) ~~It is unlawful for any responsible person to fail to reduce or eliminate a lead hazard that is within his or her control, ownership, or possession.~~

Lead Hazard Prevention and Control Ordinance**§ 54.1001 Findings**

The Council of the City of San Diego finds and declares that:

- (a) Problem: In the City of San Diego, between 1992 and 2003, there were 781 reported cases of childhood lead poisoning (greater than 15 µg/dL) and almost 300 children in 2003 with blood lead levels greater than 10 µg/dL in San Diego County. These figures are not considered a true representation of the problem, as only a small percentage of children are tested (state average is 20%). The Centers for Disease Control and Prevention has declared that the most effective approach to lead poisoning is prevention by eliminating lead hazards from children's environment.
- (b) Health Effects: Lead is most harmful to young children because it interferes with the development of the brain, as well as other organs and systems such as the kidneys and nervous system. Lead poisoning has been linked to reduced IQ, attention deficit disorder, hearing loss, impaired growth, and reading and learning disabilities. Recent research has revealed that even low levels of lead

exposure can cause a permanent decrease in a child's IQ. In adults, high lead levels can cause high blood pressure, headaches, digestive problems, memory and concentration problems, kidney damage, mood changes, nerve disorders, sleep disturbances, and muscle or joint pain.

- (c) Housing Stock: Lead-based paint, and associated lead-contaminated dust and lead-contaminated soil, is the number one source of lead poisoning. According to the 2000 United States census, approximately sixty-six percent (310,000) of the housing units in the City of San Diego were built before 1979, and approximately twenty-eight percent (135,000) of the City of San Diego's housing stock was constructed before 1960.
- (d) Prevention is Key: Childhood lead poisoning is preventable. There is no medical treatment to reverse the effects of lead poisoning. Household lead hazards can be permanently eliminated by abatement or controlled through proper maintenance and lead-safe work practices.
- (e) Lead Paint Ban: The Consumer Product Safety Commission banned the use of lead in concentrations greater than 600 parts per million in residential paint after February 27, 1978. For this reason, paint applied to a dwelling unit or structure prior to January 1, 1979, is presumed to contain lead unless lead-based paint testing proves it is below thresholds defined in Division 10. All paint applied to a steel structure is presumed to contain lead unless lead-based paint testing proves it is below thresholds defined in Division 10.
- (f) Lead Hazard: A lead hazard found on any property, premises, dwelling unit, structure, or steel structure within the City of San Diego is a public nuisance.

- (g) Lead Safe Work Practices: Dust generated in disturbance of *lead paint* during renovation and repair is a principal source of *lead* dust exposure to our children and community. Unless the dust is contained, it permeates the carpet, ductwork, and soil, so that children and adults may breathe or ingest the dust for months and years to come.
- (h) Authority: The implementation of Division 10 and the associated enforcement will assist in reducing the presence of *lead hazards* and, thereby, help the City of San Diego in achieving its goal of eliminating childhood *lead* poisoning. On January 1, 2003, California implemented Senate Bill 460, which modified California Civil Code section 1941.1 and California Health and Safety Code sections 17920.10, 17980, 105255, and 105256 that state that the existence of *lead hazards* in housing can constitute a violation of State Housing Law and make it illegal for maintenance or construction activities to generate *lead hazards*. Amended Health and Safety Code sections 17961, 17980, 105255, and 105256 provide local jurisdictions with specific authority to correct and prevent *lead hazards*. Division 10 establishes the City of San Diego's enforcement mechanism for purposes of Senate Bill 460 and also provides additional regulation and enforcement tools which will help reduce the exposure of children and others to *lead hazards*.
- (i) Tenant Protection: The Council acknowledges that California Civil Code section 1942.5 prohibits certain acts of retaliation by a landlord against a tenant because of the tenant's complaint to an appropriate agency regarding a residential unit which contains *lead hazards*.

- (j) Necessary Service: The performance of a *lead risk assessment* in the interior and on the *exterior* of a *dwelling unit* constructed prior to January 1, 1979, as well as the common areas of the *dwelling unit*, is a necessary service and/or repair to protect the health, safety, and welfare of the occupants of the *dwelling unit* and the public.

§ 54.1002 Purpose

The purpose of Division 10 is:

- (a) to prevent, identify, and remedy *lead hazards* in housing before children are poisoned;
- (b) to protect occupants and the public from exposures to *lead hazards*;
- (c) to provide standards to implement *lead hazard* control requirements;
- (d) to strengthen the authority of local agencies responding to *lead paint* poisoning cases; and
- (e) to establish and promote *lead-safe* work practice standards for *owners*, maintenance workers, and all *persons* involved in *lead hazard* control and activities such as remodeling, *renovation*, rehabilitation, and repair that disturb *lead paint*, in order to protect occupants and the public from exposure to *lead hazards*.

§ 54.1003 Definitions

All defined terms in Division 10 appear in *italics*, except for the terms Building Permit and Demolition/Removal Permit which refer to those terms respectively as used in the Land Development Code and which, consistent with the Land

Development Code, are not italicized in this Division. For purposes of Division 10, the following terms have the following meanings:

Accredited laboratory means a laboratory which is accredited through the United States Environmental Protection Agency National Lead Laboratory Accreditation Program.

Adjacent properties means properties that abut the property at which activities which disturb or remove paint have been, are being, or will be performed.

Certified means a process used by the State of California Department of Health Services and the United States Environmental Protection Agency to identify individuals who have completed training and other requirements to permit the proper and safe execution of lead risk assessments and lead inspections, lead dust clearance sampling, or lead hazard reduction and control work.

Change of ownership means a transfer, sale, or exchange of the fee interest in any property.

Child means any person less than six years of age.

Child-care facility means a facility that provides nonmedical care for children less than 18 years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. This includes day care centers and employer-sponsored child care centers.

Clearance inspection means an onsite limited investigation, performed by a certified lead inspector/assessor or a certified lead project monitor, of single surface dust sampling or soil sampling a minimum of one hour after completion of final

cleanup activities to determine whether dust or soil lead levels are below thresholds defined in Division 10. The methodology for conducting the sampling shall follow procedures as defined in 40 Code of Federal Regulations part 745.227, as it may be amended from time to time.

Containment barriers means a system, process, or barrier, on the interior or exterior of a dwelling unit, structure, or steel structure, designed to ensure that lead-contaminated dust, lead-contaminated soil, or lead paint contaminants are not spread, blown, or tracked from inside to outside of a work site, which system, process, or barrier is at least as effective as those contained within the HUD Guidelines, or, for steel structures, at least as effective as those contained in the most recent edition of the Lead Paint Removal Guide published by the Steel Structures Painting Council.

De minimis levels means an area less than: (1) two square feet in any one interior room or space of a dwelling unit or structure; or (2) twenty square feet on an exterior surface; or (3) ten percent of the surface area on any component part, either interior room or space or exterior, with a small surface area such as a window sill, baseboard, or trim.

Department means the City Environmental Services Department and/or the Neighborhood Code Compliance Department.

Deteriorated paint means paint that is cracking, flaking, chipping, peeling, or otherwise separating from the substrate of the dwelling unit or any component thereof.

DPH means the California Department of Public Health.

Director has the same meaning as set forth in section 11.0210 of this Code.

Disturb or remove paint means any action that creates friction, pressure, heat, or a chemical reaction upon any *paint* on an interior or *exterior* surface so as to abrade, loosen, penetrate, chip, cut through, remove, or eliminate paint from that surface. This term shall include all *lead hazard* correction activities, all demolition activities, and all surface preparation activities performed upon an interior or exterior surface containing paint.

Dwelling unit has the same meaning as set forth in section 113.0103 of this Code and also includes *multiple dwelling unit* and *single dwelling unit* as those terms are defined in section 113.0103 of this Code.

Enforcement official has the same meaning as set forth in section 11.0210 of this Code.

Exterior means the outside of a *dwelling unit, structure, or steel structure* and the areas around it within the boundaries of the *property, including the exterior of any detached structure, and including, but not limited to, freestanding and common walls, stairways, fences, light wells, breezeways, sheds, garages, patio covers, decks, and any similar structures.*

HEPA means a High Efficiency Particulate Air Filter.

Home improvement store means all retail stores which sell home improvement products including, but not limited to, *paint and paint removal products, construction and building materials, and tools and hardware.*

HUD Guidelines means the most recent version of the United States Department of Housing and Urban Development "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing."

Imminent lead hazard means a lead hazard which creates a present and immediate danger to life, property, health, or public safety.

Landlord means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use or occupancy of any commercial or residential rental property in the City of San Diego, and the agent, representative, or successor of any of the foregoing.

Lead means metallic lead and all inorganic and organic compounds of lead.

Lead-based paint or lead paint means paint or other surface coatings that contain an amount of lead equal to, or in excess of, one milligram per square centimeter (1.0 mg/cm²) or one-half of one percent (0.5%) by weight.

Lead-based paint testing means: (1) testing of surfaces to determine the presence of lead-based paint performed by an independent Certified Lead Risk Assessor/Inspector, in accordance with the HUD Guidelines, and which testing includes bulk paint samples analyzed by an accredited laboratory; or (2) testing by an XRF.

Lead-contaminated dust means dust that contains an amount of lead equal to, or in excess of, forty micrograms per square foot (40 µg/ft²) for interior floor surfaces, two hundred and fifty micrograms per square foot (250 µg/ft²) for interior horizontal window surfaces, and four hundred micrograms per square foot (400 µg/ft²) for exterior floor and exterior horizontal window surfaces.

Lead-contaminated soil means bare soil that contains an amount of *lead* equal to, or in excess of, four hundred parts per million (400 ppm) in childrens' play areas and one thousand parts per million (1000 ppm) in all other areas.

Lead dust testing means tests conducted in accordance with the most recent federal guidelines to determine the presence or absence of *lead-contaminated dust* within a defined area.

Lead-free certificate means a written certification by a *Certified Lead Inspector/Assessor* that a *lead inspection* has been conducted and neither *lead paint* nor *lead hazards* are present in the interior or the exterior of a *dwelling unit*.

Lead hazard means: (1) the existence of *deteriorated paint* over a surface area larger than *de minimis levels* in the interior or exterior of a *dwelling unit* or *structure* constructed prior to January 1, 1979; or (2) the existence of *deteriorated paint*, in the interior or exterior of a *dwelling unit* or *structure* constructed prior to January 1, 1979, over a surface area smaller than *de minimis levels* but which, as determined by an *enforcement official*, is likely to endanger the health of the public or the occupants of the *dwelling unit* or *structure*; or (3) the disturbance of *lead-based paint* or *presumed lead-based paint* without *containment barriers*; or (4) the creation or maintenance of any other condition which may result in persistent and quantifiable *lead* exposure; or (5) the presence of *lead-contaminated dust* or *lead-contaminated soil*.

Lead inspection means a surface by surface investigation to determine the presence of *lead paint*, as described in Chapter 7: Lead-Based Paint Inspection,

HUD Guidelines, as they may be amended from time to time, conducted by a Certified Lead Inspector/Assessor.

Lead paint contaminants means substances containing lead paint or presumed lead-based paint which are potentially hazardous to human health or the environment including, but not limited to, paint chips and paint-containing soil, debris, dust, abrasives, fumes, or water.

Lead risk assessment means an on-site investigation by a Certified Lead Inspector/Assessor to determine the existence, nature, severity, and location of lead hazards and the preparation of a written report describing the results of the investigation and options for eliminating lead hazards.

Lead-safe certificate means a written certification, by a transferor or transferee of a dwelling unit constructed prior to January 1, 1979, that a Certified Lead Inspector/Assessor has performed a lead risk assessment on the dwelling unit and that all lead hazards have been corrected in accordance with Division 10.

Lead soil testing means tests conducted in accordance with the most recent federal guidelines to determine the presence or absence of lead-contaminated soil within a defined area.

Occupants means tenants or other persons legally authorized to occupy or partially occupy the property.

Owner means the person or persons owning property or any improvements thereon in the City of San Diego and includes such person's legally authorized agent or representative and any successors in interest.

Paint means any paint, varnish, shellac, or other similar coating.

Person means any natural person, municipal, county, or state agency to the extent allowable by law, firm, joint venture, joint stock company, business concern, trust, organization, club, association, partnership, company, or corporation, or the officers, agents, employees, managers, representatives, heirs, executors, administrators, successors, or assigns of any of them or any other entity which is recognized by law as the subject of rights and duties.

Premises has the same meaning as set forth in section 54.0202 of this Code.

Presumed lead-based paint means paint or surface coating affixed to a component in or on a dwelling unit, structure, or steel structure, excluding paint or surface coating affixed to a component in or on a dwelling unit or structure constructed on or after January 1, 1979.

Prohibited practices means work practices prohibited under section 54.1006 of this Code.

Property means real property, together with any and all improvements thereon.

Public nuisance has the same meaning as that set forth in section 11.0210 of this Code.

Regulated area means an area in which work is being performed that disturbs or removes paint and to which access is restricted in order to prevent migration of paint contaminants. Regulated area shall also include any area contaminated with lead paint as a result of a breach or lack of containment barriers or a violation of the containment requirements set forth in section 54.1006.

Renovation means any modification of all or part of an existing dwelling unit, structure, or steel structure which modification disturbs or removes paint.

Renovator means any person who performs for compensation a renovation.

Responsible person means a person who a Director determines is responsible for causing or maintaining a public nuisance or a violation of this Code or applicable state codes. The term responsible person includes, but is not limited to, an owner, tenant, person with a legal interest in property or improvements thereon, and/or a person in possession of property.

Steel structure means any structure that is not a building and that has exterior surfaces made of steel or other metal including, but not limited to, bridges, billboards, walkways, water towers, steel tanks, and roadway or railway overpasses.

Structure has the same meaning as that set forth in section 113.0103 of this Code.

Transfer of responsibility certificate means a written certification, by a transferor and transferee of a dwelling unit constructed prior to January 1, 1979, that the transferor and the transferee mutually agree that responsibility for compliance with the requirements of Division 10 is assumed by the transferee of the dwelling unit.

Underlying defect means any condition or circumstance which generates, creates, or sustains a lead hazard.

XRF means a portable X-Ray Fluorescence Spectrometer.

§ 54.1004 Lead Hazard Unlawful

- (a) It is unlawful to create and/or maintain a lead hazard or allow a lead hazard to remain upon any property, premises, surfaces, dwelling unit, structure, steel structure, or appurtenances.
- (b) It is unlawful to fail to reduce or eliminate a lead hazard.

§ 54.1005 Lead-Safe Work Practice Standards Required

- (a) It is presumed that paint in the interior or on the exterior of all dwelling units and all structures constructed prior to January 1, 1979, and all steel structures is lead-based paint.
- (b) Any person who disturbs or removes paint from any surface in the interior or on the exterior of a dwelling unit or structure constructed prior to January 1, 1979, or from any surface on a steel structure shall use lead-safe work practice standards as set forth in section 54.1006, unless a Certified Lead Inspector/Assessor determines, prior to the commencement of activities which disturb or remove paint, that the concentration of lead in the paint is below 1000 ppm or .5 mg/cm².
- (c) Any person who disturbs or removes paint in any amount in the interior or on the exterior of a dwelling unit to correct a lead hazard where a child with blood lead levels greater than or equal to 10 µg/dL has been identified shall use lead-safe work practice standards as set forth in section 54.1006.
- (d) Section 54.1005 does not change the definition of lead-based paint and is only intended to identify when lead-safe work practice standards are required.
- (e) The failure to use lead-safe work practice standards as set forth in section 54.1005 shall constitute a violation of Division 10. The lead-safe work practice standards set forth in Division 10 are in addition to, and are not a substitute for, any requirements under state or federal law. Compliance with the lead-safe work practice standards set forth in section 54.1006 does not negate responsibility for a violation of section 54.1004.

§ 54.1006 Lead Safe Work Practice Standards

The lead-safe work practice standards in this section apply to all activities which disturb or remove paint which is lead-based paint or presumed lead-based paint.

(a) Notice to Occupants

Not less than seven business days before beginning activities which disturb or remove paint, a written notice, in accordance with state and federal law, shall be posted in a conspicuous location and provided to each occupant of a dwelling unit and/or structure where such activities will be conducted. A person who engages in unplanned activities that disturb or remove paint, in response to a sudden, unexpected event which, if not immediately attended to, would present a safety or public health hazard or would threaten property with significant damage, shall provide written notice to each occupant of a dwelling unit and/or structure prior to engaging in such activities.

- (1) The written notice shall identify the location in the dwelling unit and/or structure where such activities will take place, state that lead-related activities will be performed at the dwelling unit and/or structure, and state the dates for the performance of such activities.
- (2) The written notice shall be in the form of a sign and letter or memorandum, shall be placed in a conspicuous location open and available to occupants of or any person visiting the dwelling unit and/or structure, and shall prominently state the following: "Work is scheduled to be performed beginning [date] on this property that may disturb or remove lead-based paint."

- (3) Prior to beginning activities which *disturb or remove paint*, the owner of the *property* shall provide each *occupant* with a copy of the U.S. Environmental Protection Agency pamphlet entitled "Protect Your Family From Lead-Based Paint in Your Home," unless the *owner* has previously provided this pamphlet to the *occupant*.
- (4) For purposes of Division 10, *renovators* performing activities which *disturb or remove paint* shall comply with 40 Code of Federal Regulations part 745, subpart E, as they may be amended from time to time, by providing to each *occupant* the U.S. Environmental Protection Agency pamphlet entitled "Protect Your Family From Lead-Based Paint in Your Home," by complying with the required paperwork, and by maintaining the required records.

(b) Occupant Protection

Occupants shall not be permitted to enter the *regulated area* during the course of activities which *disturb or remove paint* (unless they are employed in the conduct of these activities in the *regulated area*), until after activities which *disturb or remove paint* have been completed and clearance as set forth in section 54.1006 has been achieved.

(c) Temporary Relocation

- (1) Occupants of a *dwelling unit* shall be temporarily relocated, before and during the course of activities which *disturb or remove paint*, to a suitable, decent, safe, comparable, and similarly accessible *dwelling unit* that does not have a *lead hazard*, unless:

- (A) the activities will not disturb *lead-based paint, lead-contaminated dust or lead-contaminated soil*;
- (B) the activities affect only the *exterior* of the *dwelling unit*, and windows, doors, ventilation intakes, and other openings in or near the *regulated area* are sealed during the course of the activities and cleaned afterward, and at least one entrance is free of *lead-contaminated dust, lead-contaminated soil, and lead paint contaminants*;
- (C) the activities in the interior of the *dwelling unit* will be started and completed during the daytime within eight consecutive hours, the *regulated area* is contained so as to prevent the release of *lead-contaminated dust and lead paint contaminants* into other areas, and the activities do not create other safety, health, or environmental hazards (e.g., exposed live electrical wiring, release of toxic fumes, or on-site disposal of hazardous waste); or
- (D) the activities in the interior of the *dwelling unit* will be completed within five consecutive days, the *regulated area* is secure so as to prevent the release of *lead-contaminated dust and lead paint contaminants* into other areas, the activities do not create other safety, health, or environmental hazards, and, at the end of work on each day, the *regulated area* and the area within at least ten feet of the *regulated area* is cleaned to remove any visible dust or debris, and occupants have safe access to sleeping areas and bathroom and kitchen facilities.

(2) Occupants' belongings shall be protected from contamination by lead-contaminated dust and lead paint contaminants during the course of activities which disturb or remove paint. Occupants' belongings in the regulated area shall be relocated to a safe and secure area outside the regulated area or shall be completely covered with an impermeable covering with all seams and edges taped or otherwise sealed.

(d) Worksite Preparation

The regulated area shall be prepared to prevent the release of dust, and to contain, within the regulated area, lead-based paint chips, lead-contaminated dust, lead-contaminated soil, and lead paint contaminants from activities which disturb or remove paint until they can be safely removed from the regulated area. Practices that minimize the spread of lead-contaminated dust, lead-based paint chips, lead-contaminated soil, and lead paint contaminants shall be used during preparation of the regulated area for work which disturbs or removes paint. The tables in Appendix "A" identify the minimum required levels of worksite preparation, as excerpted from the HUD Guidelines.

(e) Specialized Cleaning

After activities which disturb or remove paint have been completed, the regulated area shall be cleaned by using:

- (1) methods, products, and devices which are successful in removing lead-contaminated dust, such as a HEPA vacuum or other method of equivalent efficacy; and
- (2) all purpose general detergents or lead-specific detergents or by following the HUD Guidelines.

(f) Visible Lead Paint Contaminants

All visible lead paint contaminants shall be cleaned up daily and removed from the regulated areas prior to completion of the activities which disturb or remove paint.

(g) Disposal

All waste generated from activities which disturb or remove paint, which is lead-based paint or presumed lead-based paint, is deemed hazardous waste pursuant to title 22 of the California Code of Regulations, as it may be amended from time to time, and must be disposed of lawfully.

(h) Lead-Safe Work Practice Clearance Inspection Standards

(1) A visual inspection to verify the absence of visible dust or debris must be performed upon the completion of all activities which disturb or remove paint:

(A) where the paint is presumed lead-based paint covering a surface area and/or affecting a component as described in the tables in Appendix "A"; or

(B) where lead-based paint testing performed on the paint revealed lead levels greater than 1000 ppm or 0.5 mg/cm².

A renovator shall record the results of the visual inspection on the form provided by the City of San Diego, shall maintain that form for a minimum of three years, and shall make all such forms available to the City of San Diego upon request.

(2) A clearance inspection must be performed upon the completion of all activities which disturb or remove paint and after visual inspection:

(A) where the paint is presumed lead-based paint covering a surface area and/or affecting a component as described in the tables in Appendix "A"; or

(B) where lead-based paint testing performed on the paint revealed lead levels greater than 5000 ppm or 1.0 mg/cm².

A copy of the DPH Form 8552 for each clearance inspection shall be submitted to the City of San Diego at:

Environmental Services Department
Lead Safe Neighborhoods Program Form 8552
9601 Ridgeway Court, Ste 310
San Diego, CA 92123

Submittal of the 8552 form to the City of San Diego does not satisfy the requirement of title 17 of the California Code of Regulations for submittal of the 8552 form to the DPH.

(3) The lead-safe work practice clearance inspection standards shall be performed only by a Certified Lead Inspector/Assessor or certified lead project monitor.

(4) All clearance inspection procedures shall be in compliance with 40 Code of Federal Regulations part 745.227, as it may be amended from time to time, and shall meet title 17 of the California Code of Regulations clearance guidelines, as it may be amended from time to time.

(i) Prohibited Practices

It is unlawful to use prohibited practices while conducting activities which disturb or remove paint including, but not limited to:

(1) acetylene or propane burning and torching;

- (2) scraping, sanding, or grinding without *containment barriers* or a *HEPA* local vacuum exhaust tool;
- (3) hydro-blasting or high-pressure wash without *containment barriers*;
- (4) abrasive blasting or sandblasting without *containment barriers* or a *HEPA* local vacuum exhaust tool; or
- (5) heat guns operating above 1,100 degrees fahrenheit;

§ 54.1007 Lead Hazards in Housing

(a) Presumption

For all *dwelling units* constructed prior to January 1, 1979, it is presumed that the *paint* in the interior or on the *exterior* of the *dwelling unit* is *lead-based paint*.

(b) Owner's Opportunity to Rebut Presumption

(1) The *owner* of a *dwelling unit* constructed prior to January 1, 1979, may apply to the *Department* to have such *dwelling unit* exempted from the presumption contained in section 54.1007(a) when either:

(A) *lead-based paint testing* results demonstrate that no *lead paint* is present in the interior or on the *exterior* of such *dwelling unit*; or

(B) *documentation from a Certified Lead Inspector/Assessor* demonstrates that alterations have been made to the *dwelling unit* and such alterations have resulted in the removal of all *lead-based paint* in that *dwelling unit*.

(2) The *Director* shall establish written policies that set forth criteria for granting the exemption described in section 54.1007(b).

(c) Owner's Duty to Correct

- (1) The existence of a lead hazard in any dwelling unit is hereby declared to constitute a condition dangerous to life and health. The owner of a dwelling unit shall take action to prevent the occurrence of a lead hazard and shall expeditiously correct a lead hazard, upon receiving notice of its existence, in accordance with section 54.1006. If the lead hazard is caused in whole or in part by an underlying defect, the owner of the dwelling unit shall correct the underlying defect to prevent a further lead hazard.
- (2) The owner of a dwelling unit shall correct all identified lead hazards and complete the clearance inspection within thirty (30) days of receiving notice of the existence of the lead hazard, unless:
 - (E) the Director or designee determines that a lead hazard is present, which lead hazard constitutes an immediate threat to the health and safety of occupants of the dwelling unit, in which case the owner of the dwelling unit shall comply with the Director's or designee's directives; or
 - (F) the owner of the dwelling unit files a statement of intent and work plan demonstrating the need for additional time to correct the lead hazard, a proposed work schedule, and the methods by which the owner will accomplish compliance with Division 10 including, but not limited to, compliance with the temporary relocation requirements of section 54.1006(c), in which case the Director or designee may extend the time for compliance with Division 10.

- (3) Within seven days after completing the *clearance inspection*, the owner of a *dwelling unit* shall provide proof of compliance with section 54.1007 by submitting a copy of the *DPH Form 8552* for each *clearance inspection* to the City of San Diego at:

Environmental Services Department
Lead Safe Neighborhoods Program Form 8552
9601 Ridgehaven Court, Ste 310
San Diego, CA 92123

Submittal of the 8552 form to the City of San Diego does not satisfy the requirement of title 17 of the California Code of Regulations for submittal of the 8552 form to the *DPH*.

- (d) Administrative abatement of a *lead hazard* shall be in accordance with the procedures provided in San Diego Municipal Code Chapter 1, Article 2, Division 6.
- (e) Summary abatement of an *imminent lead hazard* shall be in accordance with the procedures provided in San Diego Municipal Code Chapter 1, Article 2, Division 7.
- (f) Judicial abatement of a *lead hazard* shall be in accordance with the procedures provided in San Diego Municipal Code Chapter 1, Article 2, Division 2.

§ 54.1008 Procedures for Occupant Relocation

- (a) The *responsible person* is responsible for the relocation and associated costs of any *occupants* displaced as a result of a judicial, administrative or summary abatement action pursuant to Division 10 and must follow applicable requirements of state law.

- (b) If relocation costs are paid by the City, the costs shall be assessed against the responsible person as an administrative or summary abatement cost or as part of a judicial action and may be recovered pursuant to procedures in San Diego Municipal Code Chapter 1, Article 3, Division 3 (Recovery of Abatement Costs).

§ 54.1009 Visual Lead Inspection and Correction Prior to Re-Occupancy of Rental Housing

For all rental dwelling units constructed prior to January 1, 1979, the responsible person shall conduct a visual inspection for deteriorated paint each time a tenant vacates the dwelling unit and prior to re-occupancy of the dwelling unit, unless a lead-free certificate has been issued for the dwelling unit. Deteriorated paint shall be corrected prior to re-occupancy in accordance with Division 10, unless lead-based paint testing proves the deteriorated paint is not lead-based paint. Inspection, testing, and correction documents shall be maintained for three years and shall be made available to the City of San Diego upon request.

§ 54.1010 Identification and Remediation of Lead Hazards upon Change of Ownership

- (a) Upon entering into a listing agreement for the sale, transfer, or exchange of a dwelling unit constructed prior to January 1, 1978, a real estate agent shall notify the seller or transferor of the dwelling unit of the provisions of section 54.1007.
- (b) Upon entering into a limited service agreement or a fee for service agreement for the advertising or marketing of a dwelling unit constructed prior to January 1, 1978, the person offering such services shall notify the seller or transferor of the dwelling unit of the provisions of section 54.1007.

- (c) Prior to a *change of ownership*, the transferor of a *dwelling unit* constructed prior to January 1, 1978, shall have a *lead risk assessment* performed on the *dwelling unit* by a *Certified Lead Inspector/Assessor* and shall have all identified *lead hazards* corrected in accordance with Division 10 and all applicable state and federal requirements, unless the *dwelling unit* is exempt pursuant to section 54.1010(h). The requirements of this section shall apply to a *change of ownership* which occurs on or after 180 calendar days from the effective date of Division 10.
- (d) Compliance with section 54.1010(c) shall be demonstrated as follows:
- (1) Upon completing the *lead risk assessment* and correcting all identified *lead hazards*, the transferor and *Certified Lead Inspector/Assessor* shall sign a *lead-safe certificate* or *lead-free certificate* certifying compliance with the requirements of Division 10.
 - (2) Within seven days thereafter, the transferor shall forward the *lead-safe certificate* or *lead-free certificate* to the transferee for review and signature, together with all documents prepared in connection with section 54.1010 relating to *lead inspections*, *lead remediation*, and *clearance inspections* for the *dwelling unit*.
 - (3) Within seven days of receipt of the signed *lead-safe certificate* or *lead-free certificate*, the transferee shall sign the *lead-safe certificate* or *lead-free certificate*, thereby acknowledging awareness and understanding of the requirements of Division 10, and shall submit the *lead-safe certificate* or *lead-free certificate* along with the associated cost-recovery fee to:

City of San Diego
Environmental Services Lead Safe Certificate
9601 Ridgehaven Court, Ste 310
San Diego, CA 92123

- (4) If the transfer of the dwelling unit is accomplished through an escrow, the transferor also shall file a copy of the lead-safe certificate or lead-free certificate with the escrow agent before the close of escrow.
- (c) Prior to a change of ownership, the transferor and the transferee of a dwelling unit constructed prior to January 1, 1978, may agree to transfer responsibility for compliance with section 54.1010(c) to the transferee. In the event the transferor and transferee of a dwelling unit agree that the transferee shall assume this responsibility, then prior to the change of ownership, the transferor and the transferee shall complete the following procedures:
- (1) The transferor and the transferee shall sign a transfer of responsibility certificate certifying that the transferee has assumed responsibility for complying with section 54.1010(c).
- (2) After the transferor and the transferee have signed the transfer of responsibility certificate, the transferor shall submit the transfer of responsibility certificate along with the associated cost-recovery fee to:

City of San Diego
Environmental Services Lead Safe Certificate
9601 Ridgehaven Court, Ste 310
San Diego, CA 92123

- (3) If the transfer of the dwelling unit is accomplished through an escrow, the transferor also shall file a copy of the transfer of responsibility certificate with the escrow agent before the close of escrow.

- (4) The transferee shall perform a *lead risk assessment*, correct all identified *lead hazards*, and complete the *clearance inspection* within ninety days of the *change of ownership*, unless:
- (A) the *Director* or designee determines that a *lead hazard* is present, which *lead hazard* constitutes an immediate threat to the health and safety of *occupants* of the *dwelling unit*, in which case the transferee shall comply with the *Director's* or designee's directives; or
- (B) the transferee files a statement of intent and work plan demonstrating the need for additional time, a proposed work schedule, and the methods by which the transferee will accomplish compliance with Division 10 including, but not limited to, compliance with the temporary relocation requirements of section 54.1006(c), in which case the *Director* or designee may extend the time for compliance with Division 10.
- (5) Upon completing the *lead risk assessment* and correcting all identified *lead hazards*, the transferee and the *Certified Lead Inspector/Assessor* shall sign a *lead-safe certificate* or *lead-free certificate* certifying compliance with the requirements of Division 10.
- (6) Within thirty days of the completion of the requirements of section 54.1010(c), the transferee shall submit the signed *lead-safe certificate* or *lead-free certificate* and all *DPH* Forms 8552 associated with *lead hazard* control work performed on the interior and exterior of the *dwelling unit* along with the associated cost-recovery fee to:

City of San Diego
Environmental Services Lead Safe Certificate
9601 Ridgehaven Court, Ste 310
San Diego, CA 92123

- (f) The lead risk assessment must be conducted according to the following procedures:
- (1) Background information shall be collected regarding the physical characteristics of the dwelling unit use patterns that may cause lead exposure to a child.
 - (2) Each surface with deteriorated paint, as determined by documented methodologies, shall be tested for the presence of lead. Every other surface which is a potential source of lead hazards, as determined by documented methodologies, shall be tested for the presence of lead.
 - (3) Single surface dust sampling from windows and floors shall be collected in all living areas where deteriorated paint has been identified.
 - (4) If any deteriorated paint is present on the exterior of a dwelling unit, soil samples shall be collected and analyzed for lead concentrations in the exterior play areas where bare soil is present and in the dripline/ foundation areas where bare soil is present.
 - (5) The lead risk assessment report, prepared by the Certified Lead Inspector/Assessor shall include the following information:
 - (A) date of assessment;
 - (B) address of each dwelling unit;
 - (C) date of construction of each dwelling unit;

- (D) name, address, and telephone number of each *owner* of each *dwelling unit*;
- (E) name, signature, and certification of the *Certified Lead Inspector/Assessor* conducting the assessment;
- (F) name, address, and telephone number of each *accredited laboratory* conducting analysis of collected samples;
- (G) results of the visual inspection;
- (H) testing methods and sampling procedures employed for *paint* analysis;
- (I) specific locations of each *painted* component tested for the presence of *lead*;
- (J) all data collected from on-site testing, including quality control data and, if used, the serial number of any *XRF* device used;
- (K) all results of laboratory analysis on collected *paint*, soil, and dust samples;
- (L) all other sampling results;
- (M) all background information collected pursuant to section 54.1010;
- (N) to the extent that they are used as part of the *lead hazard* determination, the results of all previous inspections or analyses for the presence of *lead paint* or other assessments related to *lead hazards*;
- (O) a description of the location, type, and severity of identified *lead hazards* and all other potential *lead hazards*; and

- (P) a description of interim controls and/or abatement options for each identified *lead hazard*. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.
- (g) The transferor of a *dwelling unit* constructed prior to January 1, 1978, shall not be required to conduct a *lead risk assessment* when a *change of ownership* occurs as a result of the following:
- (1) a court order, including an order by a probate court in the administration of an estate;
 - (2) a foreclosure or voluntary or involuntary bankruptcy;
 - (3) the exercise of eminent domain;
 - (4) the administration of a deceased person's estate, guardianship, conservatorship, or trust;
 - (5) one title co-holder of real *property* transferring, selling, or exchanging with one or more other title co-holders;
 - (6) a transfer, without consideration, from one family member to another family member; or
 - (7) a decree of dissolution of marriage, a decree of legal separation, or a *property settlement agreement* incidental to any such decree.
- (h) The transferor of a *dwelling unit* constructed prior to January 1, 1978, shall not be required to perform a *lead risk assessment* if a *lead-free certificate* has been issued for the *dwelling unit*.

- (i) The owner of the dwelling unit shall maintain the lead risk assessment report and supporting documentation for a period of five years from the date of the report and shall make the report and supporting documentation available to the City of San Diego upon request.

§ 54.1011 Duty to Notify

- (a) All home improvement stores and stores which sell or rent high pressure water equipment shall maintain a supply of the lead-safe work practices pamphlets prepared and supplied by the Director. The pamphlets shall be prominently displayed where painting supplies are sold and high pressure water equipment is sold or rented and shall be provided upon request to customers or other invitees.
- (b) Home improvement stores and stores which sell or rent high pressure water equipment shall conspicuously post the Lead-Safe Work Practices sign prepared by the Director or a sign of substantially the same size, typeface, and language. The sign shall make the following statement, or a substantially equivalent statement, in large or boldface capital letters no less than one-half inch in size:

IT IS UNLAWFUL TO CREATE A LEAD HAZARD.
YOU ARE REQUIRED TO USE LEAD-SAFE WORK
PRACTICES IF YOU LIVE IN A PRE-1979 DWELLING
AND WILL BE DISTURBING PAINT. PAINTING AND
REMODELING CAN EXPOSE YOUR FAMILY TO
LEAD. ASK FOR A FREE PAMPHLET ON LEAD-
BASED PAINT HAZARDS.

- (c) For all dwelling units constructed prior to January 1, 1978, the responsible person shall be in compliance with 24 Code of Federal Regulations parts 35.80 -- 98 inclusive.
- (d) All DPH-certified lead personnel conducting lead hazard evaluation (e.g., risk assessment, clearance inspection, paint testing, dust sampling, etc.) shall deliver a completed copy of the DPH Lead Hazard Evaluation Report (Form 8552) to the City of San Diego, if the property evaluated is located within the city limits of the City of San Diego, within thirty days of conducting the evaluation. The copy shall be submitted to:

City of San Diego
Environmental Services Lead Form 8552
9601 Ridgehaven Court, Suite 310
San Diego, CA 92123

Submittal of the 8552 form to the City of San Diego does not satisfy the requirement of title 17 of the California Code of Regulations for submittal of the 8552 form to the DPH.

§ 54.1012 Child-Care Facility

Each child-care facility licensed or approved by the State of California, except for a child-care facility located on public school property, shall require a parent or legal guardian of each child between the ages of six months and seven years of age inclusive to provide a statement from a physician or health care provider that the child has been screened for lead poisoning. This statement must indicate that the screening of the child has been performed in accordance with applicable criteria mandated by the State of California. This statement shall be provided prior to admission, but in no event later than thirty days after admission. The child-care

facility shall maintain the statement for three years after receipt and shall make such statements available to the City for review during normal operating hours upon request. Nothing in section 54.1012 shall be construed to require any child to undergo a blood lead level screening or test when the parent or guardian of the child objects on the grounds that the screening or test conflicts with his or her religious beliefs.

§ 54.1013 Enforcement Authority

- (a) The Director is authorized to administer and enforce the provisions of Chapter 5, Article 4, Division 10 of this Code. The Director or anyone designated by the Director to be an enforcement official may exercise any enforcement powers as provided in Chapter 1 of this Code.
- (b) In addition to the general enforcement powers provided in Chapter 1 of this Code, the Director or designee may exercise any of the following supplemental enforcement powers as the Director or designee determines may be necessary under the circumstances.

(1) Inspection Authority

The Director or designee is authorized to inspect the interior and exterior of any dwelling unit, structure, steel structure, adjacent properties, or premises where conditions may exist which could amount to a lead hazard or where activities which may disturb or remove paint, which is lead-based paint or presumed lead-based paint, have been, are being, or will be conducted, for the purpose of determining the validity of a complaint or compliance with Division 10. All inspections shall be

conducted in a reasonable manner. If an *owner, occupant, or agent* refuses permission to enter or inspect, the *Director* or designee may seek an administrative inspection warrant pursuant to the procedures provided for in California Code of Civil Procedure sections 1822.50 through 1822.60.

(2) Sampling Authority

The *Director* or designee may collect *paint, dust, and soil samples from the interior or exterior of a dwelling unit, structure, steel structure, adjacent properties, or premises* where conditions may exist which amount to a *lead hazard* or where activities which *disturb or remove paint, which is lead-based paint or presumed lead-based paint, have been, are being, or will be conducted, for the purpose of determining the validity of a complaint or compliance with Division 10.*

(3) Training

The *Director* or designee may require a *responsible person, and any employee, agent, or representative of a responsible person in violation of Division 10 to attend an approved lead-safe work practice training course. The Director or designee shall require proof of attendance and satisfactory completion of the course, including certification from the instructor or provider of the course. Upon receipt of said proof, the Director or designee, in his or her sole discretion, may reduce or eliminate an administrative penalty, if any, imposed for a violation of Division 10.*

§ 54.1014 Enforcement Remedies

- (a) It is unlawful to violate any provision or requirement of Division 10. The failure to comply with any requirement of Division 10 constitutes a violation of Division 10. Violations of the provisions or requirements of Division 10 may be prosecuted as misdemeanors subject to the penalties provided in section 12.0201 of this Code. The *Director* or designee alternatively may seek injunctive relief or civil penalties in the Superior Court pursuant to section 12.0202 of this Code or may pursue any administrative remedy provided in Chapter 1, Article 2, Divisions 3 through 10 inclusive, of this Code.
- (b) Remedies under section 54.1014 are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

§ 54.1015 Cost Recovery

(a) Reinspection Fee

Whenever the *Director* or designee reinspects a *dwelling unit, structure, steel structure, adjacent properties, or premises* to determine compliance with Division 10, this Code, or applicable state law, the *Director* may assess and collect fees, as set forth in Chapter 1, Article 3, Division 1 of this Code, against the *responsible person* to recover the fully ascertainable costs to the City for the following:

- (1) *dwelling unit, structure, or steel structure* reinspections;
- (2) *lead-safe work practice* reinspections;

- (3) laboratory analysis; and
 - (4) sample collection fees.
- (b) Fees, including but not limited to Reinspection Fees, fees set forth in section 54.1010, and increases to Building Permit fees and Demolition/Removal Permit fees, which are imposed for purposes of regulation, education, and enforcement under Division 10 shall be segregated and deposited into a separate account within a fund. All such fees and accrued interest thereon shall be used solely and exclusively for the purposes for which the fee was imposed.
- (c) The assessment and collection of these fees shall not preclude the imposition of any administrative or judicial penalty or fine for violations of this Code or applicable state laws.
- (d) Civil penalties collected pursuant to Division 10 and investigative costs associated with the enforcement action shall be deposited in the Code Enforcement Civil Penalty Fund established pursuant to section 13.0402 of this Code.
- (e) A fee schedule shall be established and revised as necessary by the City Manager in accordance with Council Policy and City Administrative Regulations to reflect current costs. The fee schedule shall be filed in the Rate Book of City Fees and Charges in the City Clerk's Office.

§ 54.1016 Strict Liability Offenses

Violations of Division 10 shall be treated as strict liability offenses regardless of intent.

<u>*INTERIOR WORKSITE PREPARATION LEVELS (NOT INCLUDING WINDOWS)</u>				
<u>Description</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>	<u>Level 4</u>
<u>Typical Applications (Hazard Controls)</u>	<u>Dust removal and any abatement or interim control method disturbing no more than 2 square feet of painted surface per room.</u>	<u>Any interim control or abatement method disturbing between 2 and 10 square feet of painted surface per room.</u>	<u>Same as Level 2.</u>	<u>Any interim control or abatement method disturbing more than 10 square feet per room.</u>
<u>Time Limit Per Dwelling</u>	<u>One work day.</u>	<u>One work day.</u>	<u>Five work days.</u>	<u>None.</u>
<u>Containment and Barrier System</u>	<u>Single layer of plastic sheeting on floor extending 5 feet beyond the perimeter of the treated area in all directions. No plastic sheeting on doorways is required, but a low physical barrier (furniture, wood planking) to prevent inadvertent access by resident is recommended.</u>	<u>Two layers of plastic on entire floor or isolate the work area. Plastic sheet with primitive airlock flap on all doorways. Doors secured from inside the work area need not be sealed.</u>	<u>Two layers of plastic on entire floor or isolate the work area. Plastic sheet with primitive airlock flap on all doorways to work areas. Doors secured from inside the work area need not be sealed. Overnight barrier should be locked or firmly secured.</u>	<u>Two layers of plastic on entire floor or isolate the work area. If entire unit is being treated, cleaned, and cleared, individual room doorways need not be sealed. If only a few rooms are being treated, seal all doorways with primitive airlock flap to avoid cleaning entire dwelling. Doors secured from inside the work area need not be sealed.</u>
<u>Warning Signs</u>	<u>Required at entry to room but not on building (unless exterior work is also under way).</u>	<u>Same as Level 1.</u>	<u>Posted at main and secondary entryways, if resident will not be present to answer the door.</u>	<u>Posted at building exterior near main and secondary entryways, if resident will not be present to answer the door.</u>

<u>*INTERIOR WORKSITE PREPARATION LEVELS (NOT INCLUDING WINDOWS)</u>				
<u>Description</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>	<u>Level 4</u>
<u>Ventilation System</u>	<u>Dwelling ventilation system turned off, but vents need not be sealed with plastic if they are more than 5 feet away from the surface being treated. Negative pressure zones (with "negative air" machines) are not required, unless large supplies of fresh air must be admitted into the work area to control exposures to other hazardous substances (for example, solvent vapors).</u>	<u>Turned off and all vents in room sealed with plastic. Negative pressure zones (with "negative air" machines) are not required, unless large supplies of fresh air must be admitted into the work area to control exposure to other hazardous substances (for example, solvent vapors).</u>	<u>Same as Level 2.</u>	<u>Same as Level 2.</u>
<u>Furniture</u>	<u>Left in place uncovered if furniture is more than 5 feet from working surface. If within 5 feet, furniture should be sealed with a single layer of plastic or moved for paint treatment. No covering is required for dust removal.</u>	<u>Removed from work area. Large items that cannot be moved can be sealed with a single layer of plastic sheeting and left in work area.</u>	<u>Same as Level 2.</u>	<u>Same as Level 2.</u>

<u>*INTERIOR WORKSITE PREPARATION LEVELS (NOT INCLUDING WINDOWS)</u>				
<u>Description</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>	<u>Level 4</u>
<u>Cleanup</u> (See Chapter 14 of HUD Guidelines for further discussion of cleanup methods)	<u>HEPA vacuum, wet wash, and HEPA vacuum all surfaces and floors extending 5 feet in all directions from the treated surface. For dust removal work alone, a HEPA vacuum and wet wash cycle is adequate (i.e., no second pass with a HEPA vacuum is needed). Also wet wash and HEPA vacuum floor in adjacent area(s) used as pathway to work area. Do not store lead paint contaminants inside dwelling overnight; transfer to a locked secure area at the end of each day.</u>	<u>HEPA vacuum, wet wash, and HEPA vacuum all surfaces in room. Also wet wash and HEPA vacuum floor in adjacent area(s) used as pathway to work area. Do not store lead paint contaminants inside dwelling overnight; use a secure locked area.</u>	<u>Remove top layer of plastic from floor and discard. Keep bottom layer of plastic on floor for use on the next day. HEPA vacuum, wet wash, and HEPA vacuum all surfaces in room. Also wet wash and HEPA vacuum floor in adjacent area(s) used as pathway to work area. Do not store lead paint contaminants inside dwelling overnight; use a secure locked area.</u>	<u>Full HEPA vacuum, wet wash, and HEPA vacuum cycle, as detailed in Chapter 14 of HUD Guidelines.</u>
<u>Clearance Inspection</u>	<u>Visual Clearance only</u>	<u>Clearance inspection if it is presumed lead-based paint or testing determines lead levels are greater than 5000 ppm or 1.0 mg/cm².</u>	<u>Clearance inspection if it is presumed lead-based paint or testing determines lead levels are greater than 5000 ppm or 1.0 mg/cm².</u>	<u>Clearance inspection if it is presumed lead-based paint or testing determines lead levels are greater than 5000 ppm or 1.0 mg/cm².</u>

* Worksite preparation levels for floor sanding and abrasive blasting on surfaces that contain lead paint or presumed lead-based paint are not included in this table. Work shall follow the HUD Guidelines chapter 8, section VII.

Note: Primitive air locks are constructed using two sheets of plastic. The first one is taped on the top, the floor, and two sides of doorway. Next, cut a slit 6 feet high down the middle of the plastic; do not cut the slit all the way down to the floor. Tape the second sheet of plastic across the top of the door only, so that it acts as a flap. The flap should open into the work area.

<u>*EXTERIOR WORKSITE PREPARATION LEVELS (NOT INCLUDING WINDOWS)</u>			
<u>Description</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>
<u>Typical Applications</u>	<u>Any interim control or abatement method disturbing less than 10 square feet of exterior painted surface per dwelling. Also includes soil control work.</u>	<u>Any interim control or abatement method disturbing between 10 to 50 square feet of exterior painted surface per dwelling. Also includes soil control work.</u>	<u>Any interim control or abatement method disturbing more than 50 square feet of exterior painted surface per dwelling. Also includes soil control work.</u>
<u>Time Limit Per Dwelling</u>	<u>One day.</u>	<u>None.</u>	<u>None.</u>
<u>Containment and Barrier System</u>	<u>One layer of plastic on ground extending 10 feet beyond the perimeter of working surfaces. Extend plastic further if necessary to collect paint chips and associated debris. Do not anchor ladder feet on top of plastic (Puncture the plastic to anchor ladders securely to ground). For all other exterior plastic surfaces, protect plastic with boards to prevent puncture from falling debris, nails, etc., if necessary. Raise edges of plastic to create a basin to prevent contaminated runoff in the event of unexpected precipitation. Secure plastic to side of building with tape or other anchoring system (no gaps between plastic and building). Weight all plastic sheets down with two-by-fours or similar objects. Keep all windows within 20 feet of working surfaces closed, including windows of adjacent structures.</u>	<u>Same as Level 1.</u>	<u>Same as Level 1.</u>

<u>*EXTERIOR WORKSITE PREPARATION LEVELS (NOT INCLUDING WINDOWS)</u>			
<u>Description</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>
<u>Playground Equipment, Toys, Sandbox</u>	<u>Remove all movable items to a 20-foot distance from working surfaces. Items that cannot be readily moved to a 20-foot distance can be sealed with taped plastic sheeting.</u>	<u>Same as Level 1.</u>	<u>Same as Level 1.</u>
<u>Security</u>	<u>Erect temporary fencing or barrier tape at a 20-foot perimeter around working surfaces (or less if distance to next building or sidewalk is less than 20 feet). If an entryway is within 10 feet of working surfaces, require use of alternative entryway. If practical install vertical containment to prevent exposure. Use a locked dumpster, covered truck, or locked room to store lead paint contaminants before disposal.</u>	<u>Same as Level 1.</u>	<u>Same as Level 1.</u>
<u>Signs</u>	<u>Post warning signs on the building and at a 20-foot perimeter around building (or less if distance to next building or sidewalk is less than 20 feet).</u>	<u>Same as Level 1.</u>	<u>Same as Level 1.</u>
<u>Weather</u>	<u>Do not conduct work if wind speeds are greater than 20 miles per hour or if paint chips and/or associated debris are blown off containment. Work must stop and cleanup must occur before rain begins.</u>	<u>Same as Level 1.</u>	<u>Same as Level 1.</u>

<u>*EXTERIOR WORKSITE PREPARATION LEVELS (NOT INCLUDING WINDOWS)</u>			
<u>Description</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>
<u>Cleanup</u> (See Chapter 14 of HUD Guidelines)	<u>Do not leave lead paint contaminants or plastic out overnight if work is not completed. Keep all lead paint contaminants in secured area until final disposal.</u>	<u>Same as Level 1.</u>	<u>Same as Level 1.</u>
<u>Porches</u>	<u>If dwelling is occupied, one lead-safe entryway must be made available to residents at all times. Do not treat front and rear porches at the same time if there is not a third doorway.</u>	<u>Same as Level 1.</u>	<u>Same as Level 1.</u>
<u>Clearance Inspection</u>	<u>Visual Clearance Inspection</u>	<u>Clearance inspection required if it is presumed lead-based paint or testing determines lead levels are greater than 5000 ppm or 1.0 mg/cm².</u>	<u>Clearance inspection required if it is presumed lead-based paint or testing determines lead levels are greater than 5000 ppm or 1.0 mg/cm².</u>

* Worksite preparation levels for floor sanding and abrasive blasting on surfaces that contain lead paint or presumed lead-based paint are not included in this table. Work shall follow the HUD Guidelines chapter 8, section VII.

<u>WINDOW TREATMENT OR REPLACEMENT WORKSITE PREPARATION</u>	
<u>Appropriate Applications</u>	<u>Any Window Treatment or Replacement</u>
<u>Time Limit Per Dwelling</u>	<u>None.</u>

<u>WINDOW TREATMENT OR REPLACEMENT WORKSITE PREPARATION</u>	
<u>Appropriate Applications</u>	<u>Any Window Treatment or Replacement</u>
<u>Containment and Barrier System</u>	<u>One layer of plastic on ground or floor extending 5 feet beyond the perimeter of window being treated/ replaced. Two layers of plastic taped to interior wall if working on window from outside; if working from the inside, tape two layers of plastic to exterior wall. If working from inside, implement a minimum interior Worksite Preparation Level 2. Children cannot be present in an interior room where plastic sheeting is located due to suffocation hazard. Do not anchor ladder feet on top of plastic (place a hard surface such as plywood under ladder). For all other exterior plastic surfaces, protect plastic with boards to prevent puncture from falling debris, nails, etc. (if necessary). Secure plastic to side of building with tape or other anchoring system (no gaps between plastic and building). Weigh all plastic sheets down with two-by-fours or similar objects. All windows in dwelling should be kept closed. All windows in adjacent dwellings that are closer than 20 feet to the work area should be kept closed.</u>
<u>Signs</u>	<u>Post warning signs on the building and at a 20-foot perimeter around building (or less if distance to next building or sidewalk is less than 20 feet). If window is to be removed from inside, no exterior sign is necessary.</u>
<u>Security</u>	<u>Erect temporary fencing or barrier tape at a 20-foot perimeter around building (or less if distance to next building or sidewalk is less than 20 feet). Use a locked dumpster, covered truck, or locked room to store <i>lead paint contaminants</i> before disposal.</u>
<u>Weather</u>	<u>Do not conduct work if wind speeds are greater than 20 miles per hour or if paint chips and/or associated debris are blown off containment. Work must stop and cleanup must occur before rain begins.</u>
<u>Playground Equipment, Toys, Sandbox</u>	<u>Remove from work area and adjacent areas. Remove all items to a 20-foot distance from dwelling. Large, unmovable items can be sealed with taped plastic sheeting.</u>
<u>Cleaning</u>	<u>If working from inside, HEPA vacuum, wet wash, and HEPA vacuum all interior surfaces within 10 feet of work area in all directions. If working from the exterior, no cleaning of the interior is needed, unless the containment is breached. Similarly, no cleaning is needed on the exterior if all work is done on the interior and the containment is not breached. If containment is breached, then cleaning on both sides of the window should be performed. No <i>lead paint contaminants</i> or plastic should be left out overnight if work is not completed. All <i>lead paint contaminants</i> must be kept in a secure area until final disposal.</u>
<u>Clearance Inspection</u>	<u><i>Clearance inspection</i> required if work is performed from interior of <i>dwelling unit</i> and if it is <i>presumed lead-based paint</i> or testing determines <i>lead levels</i> are greater than 5000 ppm or 1.0 mg/cm².</u>

GCL:mb
02/27/08
Or.Dept:ESD
SO-2008-90

CITY ATTORNEY DIGEST

ORDINANCE NUMBER O-_____ (New Series)

DATE OF FINAL PASSAGE _____

EFFECTIVE DATE _____

AN ORDINANCE OF THE CITY OF SAN DIEGO AMENDING
CHAPTER 1, ARTICLE 2, DIVISION 2, OF THE MUNICIPAL CODE
BY AMENDING SECTION 12.0204 RELATING TO JUDICIAL
ABATEMENT; AND FINDING NO ENVIRONMENTAL IMPACT.

This ordinance adds a subsection to the Municipal Code clarifying that it is unlawful to maintain or allow the existence of a public nuisance.

This ordinance contains a notice that a full reading of the ordinance is dispensed with prior to its passage, since a written copy was made available to the City Council and the public prior to the day of passage.

This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

A complete copy of this ordinance is available for inspection in the Office of the City Clerk, City of San Diego, 2nd Floor, City Administration Building, 202 C Street, San Diego, CA 92101.

GCL:mb
02/27/08
Or.Dept: ESD
D-2008-109

000629

(O-2008-109)

ORDINANCE NUMBER O-_____ (New Series)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE CITY OF SAN DIEGO AMENDING
CHAPTER 1, ARTICLE 2, DIVISION 2 OF THE MUNICIPAL CODE
BY AMENDING SECTION 12.0204 RELATING TO JUDICIAL
ABATEMENT; AND FINDING NO ENVIRONMENTAL IMPACT.

WHEREAS, the Council of the City of San Diego wishes to clarify that maintaining
or allowing the existence of a public nuisance is a violation of the San Diego Municipal Code;
NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter 1, Article 2, Division 2 of the San Diego Municipal Code relating
to Judicial Abatement is hereby amended by amending Section 12.0204 to read as follows:

§ 12.0204 Judicial Abatement

- (a) It is unlawful to maintain or allow the existence of any condition that
creates a *public nuisance*.
- (b) Pursuant to California Government Code section 38773, the City has
the authority to judicially abate *public nuisances* by filing criminal
or civil actions. The City also has the authority to make the expense
of abatement of the *public nuisance* a special assessment, or a lien
against the property on which it is maintained and a personal
obligation against the *property owner*, in accordance with California
Government Code section 38773.1 or 38773.5.

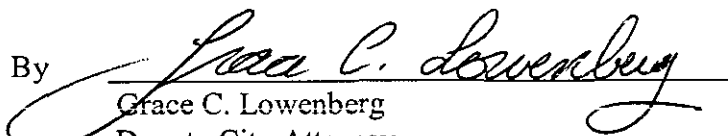
Section 2. That this activity is not subject to the California Environmental Quality Act pursuant to CEQA Guidelines section 15060(c)(2) because this activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.

Section 3. That a full reading of this ordinance is dispensed with prior to passage, since a written copy was made available to the City Council and the public prior to the day of passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By


Grace C. Lowenberg
Deputy City Attorney

GCL:mb

02/27/08

Or.Dept: ESD

O-2008-109

I hereby certify that the foregoing ordinance was passed by the Council of the City of San Diego, at its meeting of _____.

ELIZABETH S. MALAND, City Clerk

By _____

Deputy City Clerk

Approved: _____

(date)

JERRY SANDERS, Mayor

Vetoed: _____

(date)

JERRY SANDERS, Mayor

(O-2008-109)

OLD LANGUAGE - ~~STRICKEN~~
NEW LANGUAGE - UNDERLINED

STRIKEOUT ORDINANCE

ORDINANCE NUMBER O-_____ (New Series)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE CITY OF SAN DIEGO AMENDING
CHAPTER 1, ARTICLE 2, DIVISION 2 OF THE MUNICIPAL CODE
BY AMENDING SECTION 12.0204 RELATING TO JUDICIAL
ABATEMENT; AND FINDING NO ENVIRONMENTAL IMPACT.

§ 12.0204 Judicial Abatement

- (a) It is unlawful to maintain or allow the existence of any condition that creates a public nuisance.
- (b) Pursuant to California Government Code section 38773, the City has the authority to judicially abate nuisances public nuisances by filing criminal or civil actions. The City also has the authority to make the expense of abatement of the nuisance public nuisance a special assessment, or a lien against the property on which it is maintained and a personal obligation against the property owner, in accordance with California Government Code Ssection 38773.1 or 38773.5.

GCL:mb
02/27/08
Or.Dept:ESD
S-2008-109

(R-2008-717)

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE CITY COUNCIL ESTABLISHING
A COST RECOVERY REGULATORY FEE AND A COST
RECOVERY APPLICATION FILING FEE IN CONNECTION
WITH THE NEW LEAD HAZARD PREVENTION AND
CONTROL ORDINANCE; FINDING THAT SUCH FEES
ARE FOR OPERATING EXPENSES; AND RECEIVING
ASSOCIATED REPORTS, MEMOS, AND FEE COST
CALCULATIONS.

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. That a cost recovery, regulatory fee of \$31.00 is hereby established, to be added to the permit fee for the specific Building and Demolition/Removal permits identified in Report to the Council No. 08-029 dated March 5, 2008, for lead enforcement in connection with the new Lead Hazard Prevention and Control Ordinance No. O-2008-90 [Ordinance] sections 54.1005 Lead Safe Work Practice Standards Required and 54.1006 Lead Safe Work Practice Standards.
2. That the new cost recovery, regulatory fee of \$31.00 shall become effective beginning sixty days after the date of final passage of the Ordinance.
3. That a cost recovery, application filing fee of \$40.00 is hereby established for a lead-safe or lead-free certificate in connection with the Ordinance section 54.1010 Identification and Remediation of Lead Hazards Upon Change of Ownership.
4. That the new cost recovery, application filing fee of \$40.00 shall become effective beginning 180 days after the date of final passage of the Ordinance.
5. That the City Clerk is hereby directed to amend the Ratebook of City Fees and Charges to reflect the new cost recovery, regulatory fee and the new cost recovery, application filing fee described above.

6. That the Council hereby finds that the new cost recovery, regulatory fee is established for the purpose of meeting operating expenses associated with education, outreach, and enforcement in connection with sections 54.1005 and 54.1006 of the Ordinance.

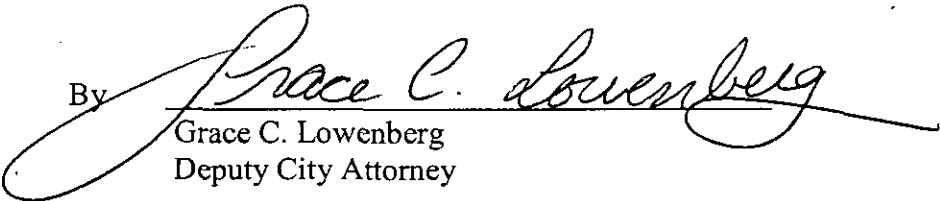
7. That the Council hereby finds that the new cost recovery, application filing fee is established for the purpose of meeting operating expenses associated with issuance of lead-safe or lead-free certificates, education, outreach, and enforcement in connection with section 54.1010 of the Ordinance.

8. That the Council hereby receives City Manager Report No. 04-178, dated July 29, 2004 regarding Comprehensive Lead Paint Ordinance and associated fee cost calculations and proposed fee schedule set forth in the Memorandum to the City Council from Jay Goldstone dated January 23, 2008 regarding Lead Hazard Prevention and Control Ordinance Cost Recovery Fee Information.

9. That the establishment of the proposed fees is statutorily exempt from the California Environmental Quality Act [CEQA] pursuant to CEQA Guidelines section 15273(a)(1) because they are established for the purpose of meeting operating expenses associated with the Ordinance. The remaining activities are exempt from CEQA pursuant to CEQA Guidelines section 15060(c)(2) because the activities will not result in a direct or reasonably foreseeable indirect physical change in the environment.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By


Grace C. Lowenberg
Deputy City Attorney

GCL:mb
02/27/08
Or.Dept:ESD
R-2008-717

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego,
at its meeting of _____.

ELIZABETH S. MALAND, City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor



Gregory J. Smith

COUNTY OF SAN DIEGO

ASSESSOR / RECORDER / COUNTY CLERK

#330
3-11-08



ASSESSOR'S OFFICE

1600 Pacific Highway, Room 103
San Diego, CA 92101-2480
Tel. (619) 236-3771 • Fax (619) 557-4056

www.sdarcc.com

RECORDER / COUNTY CLERK'S OFFICE

1600 Pacific Highway, Room 260
P.O. Box 121750 • San Diego, CA 92112-1750
Tel. (619) 237-0502 • Fax (619) 557-4155

March 6, 2008

The Honorable Jerry Sanders
Office of the Mayor
City of San Diego
202 C Street
San Diego, CA 92101-4806

Dear Mayor Sanders:

It has been brought to my attention that as part of your efforts to address and prevent lead poisonings in children, you will be considering an ordinance which would require Lead Paint Inspections and Remediations of Real Property simultaneous with the transfer of ownership. While I applaud you for your concern regarding the potential health risks to our citizens, I want to make you are aware that such an ordinance could have an adverse impact on the assessed values for the city.

My office is presently experiencing a significant number of requests for temporary reductions of assessed values under Proposition 8, based upon the present downturn in real estate. In addition, we have received 11,456 formal assessment appeal applications prior to November 30, 2007. While we are still projecting an overall increase in the assessment roll for this year, it will be significantly less than last year.

Any issues that could potentially affect the assessment roll should be given thorough economic analysis prior to implementation. With an estimated 148,000 single-family homes and condominiums in the City of San Diego built before 1978, this ordinance could potentially have a negative impact on the sale prices of these properties that could translate to lower property taxes for the city.

Branch Offices Available To Serve You

CHULA VISTA

590 Third Avenue
Chula Vista, CA 91910-5617
(619) 498-2200

EL CAJON

200 S. Magnolia Avenue
El Cajon, CA 92020-4524
(619) 401-5700

KEARNY MESA

9225 Clairemont Mesa Blvd.
San Diego, CA 92123-1211
(858) 505-6262

SAN MARCOS

141 E. Carmel St.
San Marcos, CA 92078-4309
(760) 940-6868

Mayor Sanders

Page 2

March 6, 2008

Therefore, I would respectfully request that you thoroughly evaluate the potential property tax consequences that could arise from this new ordinance prior to its implementation. If I can provide any help or assistance in determining the property tax consequences of this new requirement, please do not hesitate to contact me directly at (619) 531-5507.

Sincerely,

A handwritten signature in black ink, appearing to be 'GJS', written over a horizontal line.

GREGORY J. SMITH

County Assessor/Recorder/Clerk

GJS:jmr

330
3/11



March 5, 2008

Elizabeth Maland, City Clerk
City of San Diego
202 C Street
San Diego, CA 92101

**Re: Proposed Lead Hazards Ordinance – Support if Amended
March 11, 2008 Docket #330 & #331**

Dear Ms. Maland:

On December 21, 2007, the San Diego County Apartment Association (SDCAA) had sent the attached letter to you and the Council offices regarding the Proposed Lead Hazards Ordinance, which is now coming forward on the March 11, 2008 docket.

At the time, the SDCAA was unable to reference a docket item number, as one had not yet been assigned. To ensure that our letter is included in the docket materials, we are again sending the letter with the recently assigned docket item number.

Please respond to me at 858-751-2213 or via e-mail at apentico@sdcaa.com to confirm that the letter will be included in the docket information.

On behalf of the members of the SDCAA, thank you in advance for your attention to this matter.

Sincerely,

Alan Pentico
Director of Public Affairs

Attachment: 12/21/2007 SDCAA Letter Regarding Proposed Lead Hazards Ordinance



San Diego County Apartment Association®

Since 1919



December 21, 2007

Mayor Sanders and Council Members
City of San Diego
202 C Street
San Diego, CA 92101

Re: Proposed Lead Hazards Ordinance – Support, if amended

Dear Mayor Sanders and Council members:

It is anticipated that in just a few weeks, the Council will be considering the long-awaited Lead Hazards ordinance. At this time, the Executive Committee of the San Diego County Apartment Association (SDCAA) has taken a position to support the ordinance if the program implementation is amended so as not to create a budget shortfall in the years ahead.

As part of the draft presented to the Land Use and Housing (LU&H) Committee in 2004, the projected budget failed to support the program being proposed after a just a few years of operation. Additionally, by year five the program was nearly \$1 million short of the funds needed to operate the program. As the ordinance stands now, the industry can integrate the rental housing requirements into their existing business practices.

In an effort to resolve the financial shortcomings of our city, the members of the SDCAA have supported increases in water and sewer rates over the next several years to bring the city's infrastructure up to date. Additionally, we have supported the Mayor's efforts to streamline city government and cut waste wherever possible. If the Lead Hazards program truly is a citywide effort, then the council needs to acknowledge this and designate general funds to ensure its success. At that time, the SDCAA will fully support the ordinance as forwarded from the LU&H committee.

In conclusion, the SDCAA supports the visual inspection of pre-1979 rental units for lead hazards, and a certified inspection of rental properties during the transfer of ownership of the property. The industry wants to be part of the solution to preventing children from being exposed to lead hazards. It has been several years since the Task Force presented the ordinance and the LU&H forwarded the ordinance to the council. It's time that the ordinance was adopted.

If you should have any questions, please feel free to contact me at 858-751-2213.

Sincerely,

Alan Pentico
Director of Public Affairs